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VIOLATIONS OF HUMAN RIGHTS IN SOUTH AFRICA: REPORT OF THE AD HOC WORKING GROUP OF EXPERTS

Interim report of the Ad Hoc Working Group of Experts on southern Africa prepared in accordance with Commission on Human Rights resolutions 1991/8 and 1991/21 and Economic and Social Council decision 1991/237

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INTRODUCTION

A. Mandate and composition of the Ad Hoc Working Group of Experts on southern Africa

1. The Ad Hoc Working Group of Experts on southern Africa has been charged with examining the situation regarding violations of human rights in South Africa since 1967, when it was first established under Commission on Human Rights resolution 2 (XXIII). The biannual mandate of the Group has been renewed regularly since then, and the Group has submitted reports every year to the Commission on Human Rights.

2. At its forty-seventh session, in resolution 1991/21 of 1 March 1991 (para. 20), the Commission on Human Rights renewed the mandate of the Ad Hoc Working Group for a further period of two years, this decision was approved by the Economic and Social Council in decision 1991/237 of 31 May 1991.

3. The Working Group is currently composed of the following six members, serving in their personal capacity and appointed by the Commission on Human Rights: Mr. Mikuin Leliel Balanda (Zaire), Chairman/Rapporteur; Mr. Felix Ermacora (Austria), Vice-Chairman; Mr. Armando Entralgo (Cuba); Mr. Elly Elikunda E. Mtango (United Republic of Tanzania); Mr. Zoran Pajic (Yugoslavia), and Mr. Mulka Govinda Reddy (India).

4. The Commission on Human Rights at its forty-seventh session requested that the Ad Hoc Working Group pay special attention to the question of detention, torture and other inhuman treatment of children in South Africa (resolution 1991/8, para. 6). In addition, the Commission renewed its request to the Government of South Africa to allow the Group to visit that country to gather information from individuals and organizations in order to ascertain the situation of human rights in South Africa (resolution 1991/21, para. 24). The Commission requested the Working Group to submit brief preliminary reports reflecting its findings at its forty-eighth and forty-ninth sessions.

5. In pursuance of this request by the Commission on Human Rights, the Chairman of the Working Group addressed a letter dated 12 April 1991 to the Permanent Representative of South Africa to the United Nations Office at Geneva, drawing his attention to Commission on Human Rights resolution 1991/21 and apprising him of the fact that the Working Group had expressed the hope that his Government would authorize it to visit South Africa in 1991. The letter read as follows:

> "On behalf of the Ad Hoc Working Group of Experts on southern Africa, I would like to refer to Commission on Human Rights resolution 1991/21, paragraphs 20 and 21 respectively, which renewed the mandate of the Working Group, inter alia, to examine the situation regarding the violations of human rights in South Africa, including, in particular, reports of torture, ill-treatment and deaths of detainees, as well as infringements of trade union rights. A copy of the resolution is attached for ease of reference.

"As you know, the Ad Hoc Working Group of Experts took note of the progress made since the key policy statements by State President F. W. De Klerk in February 1990, and expressed appreciation for the first positive measures taken to repeal apartheid policies such as the Separate Amenities Act. The Group also expressed a sentiment of encouragement at the announcement by President De Klerk regarding the fundamental changes to be introduced in 1991, and in particular, the proposed abolition of the Land Acts, the Group Areas Act and the Population Registration Act.

"Subject to a decision of the Economic and Social Council approving the above-mentioned resolution at its spring session in May 1991, the members of the Ad Hoc Working Group of Experts on southern Africa would therefore consider it particularly useful to obtain information in situ, as well as establish direct contact with the relevant officials of your Government, to enable them to prepare a report which would reflect the new situation as comprehensively as possible. The Working Group has expressed the hope that your Government would authorize it to visit the Republic of South Africa in 1991.

"In this connection, I should like to advise you that, given the time constraints imposed by its reporting obligations, the Working Group would have to undertake such a visit in the latter half of July 1991. In order to enable the Working Group to make the necessary preparations, it would be greatly appreciated if a response to this request could be received by 15 June 1991".

6. On 11 May 1991, an informal meeting took place between representatives of the Government of South Africa, the secretariat and the Working Group, during which it was emphasized that the Group would have to effect its visit before August 1991, in order to reflect its findings in its preliminary report to the General Assembly (A/46/401).

7. Subsequently, the request to visit South Africa was repeated in a further letter which the Chairman addressed to the Permanent Representative on 3 June 1991, as follows:

"I should like to refer to my letter to you of 12 April 1991 and the consultations conducted in Geneva on 11 May 1991 with Professor Ermacora on behalf of the Ad Hoc Working Group.

"Since the Economic and Social Council at its recent spring session approved the renewed mandate of the Working Group, I wish to reiterate the hope expressed in my earlier letter that your Government would authorize it to visit the Republic of South Africa in July 1991. As you know, the Group's mandate has been widened extensively by the Commission on Human Rights, which adopted resolution 1991/21 without a vote. On the basis of this mandate, the Group is required to submit a preliminary report to the General Assembly at its forty-seventh session, as well as an interim report to the Commission on Human Rights at its forty-eighth session.

"I wish to emphasize that the Group is under the obligation to submit these reports irrespective of being able to visit South Africa. The Group feels, however, that its capacity to present a comprehensive picture to the General Assembly and the Commission on Human Rights would be much enhanced if it were allowed to visit your country. The Group's activities during a visit will be based on its mandate, in line with the normal practice of all Special Rapporteurs and Working Groups appointed by the Commission, and will be guided by the standards as enacted by the various international human rights instruments and resolutions of the relevant organs of the United Nations. The Group would also take into account the findings and views of other United Nations representatives and bodies that might be invited to visit South Africa during the period under consideration, to the extent that they have a bearing on its own task. However, it should be kept in mind that, in accordance with the terms of its mandate, which is the most long-standing and comprehensive of all bodies monitoring human rights in South Africa, the Group is required to fulfil its obligations through its own activities, and by evaluating carefully all relevant information and testimony that is brought to its attention.

"Let me express our conviction that a visit by the Working Group to your country and its report thereon, including information on all aspects of the human rights situation from all relevant sources, both official and private, would have a significant impact in producing an objective and balanced evaluation. Lastly, may I assure you of the commitment of all members of the Group towards this objective.

"In the event that the Working Group is authorized to visit South Africa, I remain entirely at your disposal to discuss any further arrangements as deemed necessary.

"In order to allow the Group to make all necessary arrangements for its projected programme of activities, I would be grateful if you could communicate your Government's reply to the Centre for Human Rights by mid-June 1991".

8. Further informal contacts were made in June and July 1991; however, no written response was received by the Group to the aforementioned letters or informal contacts. Consequently, on 1 July 1991, the Chairman addressed a letter to the Permanent Representative, as follows:

"I should like to express my sincere appreciation and thanks for your cooperation, leading to the personal contact and exchange of views which took place on 26 June 1991 at the offices of the Centre for Human Rights. I consider this to be a very positive development.

"With further reference to my previous communications of 12 April, 11 May and 3 June 1991, I have to inform you that, in the absence of a reply from your Government, it has become necessary for the Ad Hoc Working Group of Experts to fall back on its contingency plans. Consequently, the Group will now proceed to London in order to fulfil the reporting responsibilities entrusted to it by the Commission on Human Rights".

9. The Chairman of the Group had a further informal contact with the Permanent Representative of the Government of South Africa in August 1991 to reiterate the Group's continued interest in visiting South Africa and that it still considers this imperative for the fulfilment of its reporting task under its mandate.

B. Organization of work and working methods adopted by the Ad hoc Working Group of Experts

Meetings and fact-finding mission

10. Pursuant to the mandate entrusted to it by the Commission on Human Rights and the Economic and Social Council, and given the special situation prevailing in South Africa, the Group decided on the modalities of a fact-finding mission. With a view to collecting as much information as possible and gathering testimony on the evolution of the situation in South Africa since its last report (E/CN.4/1991/10), the Group heard witnesses in London from 22 to 26 July and in Geneva from 29 July to 2 August 1991.

Procedure followed in conducting the fact-finding mission

11. In keeping with its normal practice, and within the framework of its mandate, the Group requested cooperation from the Member States concerned, intergovernmental and non-governmental organizations, as well as human rights organizations and individuals, in order to hear the greatest possible number of witnesses that might provide reliable information on the questions related to its mandate. The procedure followed and measures taken by the Group with respect to the organization of its fact-finding mission are described below.

Relations with Governments

12. In addition to the communications addressed to the Government of South Africa (see paras. 5 to 8) and the informal contacts established with the Permanent Representative of South Africa to the United Nations Office at Geneva, the Chairman of the Working Group, on 28 June 1991, addressed a letter to the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations Office at Geneva, drawing attention to the Group's mandate and activities and inviting his Government to cooperate in helping it to fulfil its mandate.

13. The Ad Hoc Working Group of Experts would like to express its deepest appreciation and thanks to the Government of the United Kingdom for the full cooperation it enjoyed.

Relations with United Nations bodies and the specialized agencies

14. In accordance with the terms of Commission on Human Rights resolution 1991/21 (para. 21), the Chairman of the Working Group, by letter dated 1 July 1991, invited the Chairman of the Special Committee Against Apartheid to participate in the meetings scheduled to be held in London and Geneva from 22 July to 2 August 1991. The Chairman of the Special Committee Against Apartheid responded on 17 July 1991 that, due to other international commitments, the Special Committee would not be in a position to attend the meetings.

15. The Working Group regretted very much the inability of the Special Committee to participate in its hearings, and wishes to thank the Special Committee for the information it provides to the Group regarding its activities. The Group wishes to reiterate its request to be involved and participate in the conferences, seminars or symposia organized under the auspices of the Special Committee Against Apartheid.

16. The Working Group welcomed the continued cooperation it has enjoyed with the International Labour Organisation (ILO). In order to follow the evolution of the changing situation in South Africa, the Group would welcome receiving information from ILO concerning any conferences, seminars or symposia it will hold.

Relations with African liberation movements, non-governmental organizations and private individuals

17. On 29 June 1991, the Centre for Human Rights, acting on behalf of the Ad Hoc Working Group, advised several non-governmental organizations and the main African liberation movements of the Group's mandate. They were invited to appear before the Group. The Group still considers that any information provided by them might prove useful to it in order to fulfil its mandate. Further, a number of individuals appeared before the Group to testify in their personal capacity.

Testimony collected

18. During its fact-finding meeting, the Ad Hoc Working Group held 12 meetings and heard 13 witnesses, of whom two requested to be heard in private. For that reason, their names do not appear in this report. The witnesses who testified in public are listed below. In addition to the testimony of those who appeared before the Group, a large volume of documentation was transmitted by individuals and various legal, humanitarian and human rights organizations. The records of the testimony given in public sessions are on file with the secretariat of the Working Group.

19. The following witnesses were heard at public meetings: Ms. Jane Barrett (806th meeting, London); Mr. Geoffrey Bindman (807th meeting, London); Ms. Sallie Sealey (808th meeting, London); Mr. John MacDonald, Q.C. (809th meeting, London); a representative of the Human Rights Commission of South Africa (809th meeting, London); Mr. Christopher Hall and Ms. Mary Raynor (810th meeting, London); Ms. Frances D'Souza and Mr. Michael Terry (811th meeting, London); Mr. N. Rubin and Mr. Clive Thompson (812th meeting, London); Mr. Brian Currin (813th meeting, Geneva), and a representative of the United Nations High Commissioner for Refugees (814th meeting, Geneva).

20. In conformity with the procedure followed by the Ad Hoc Working Group since 1967, each witness, after stating his or her identity, was invited by the Chairman to take an oath or made a solemn declaration. The Chairman explained to each witness the goal of the mission and referred generally to the main aspects of topics which were the subject of inquiry by the Group.

C. Other activities of the Group during its mission

21. During its visit to the United Kingdom, the Working Group was received in London on 23 July 1991 by Mr. Patrick Fairweather, Deputy Under-Secretary-General in the Ministry of Foreign and Commonwealth Affairs. An exchange of views regarding the so-called "homelands", the release of political prisoners, the conduct of members of the security forces, and educational and health facilities, inter alia, took place during the meeting.

D. Basic international norms affecting the questions within the Group's competence

22. In preparing its report, the Working Group took into consideration the basic international norms relating to its activities. It should be pointed out that all provisions contained in these norms prohibit any form of racial discrimination.

23. In the opinion of the Ad Hoc Working Group of Experts, the Universal Declaration of Human Rights represents the United Nations General Assembly's interpretation of the expression "human rights and fundamental freedoms" appearing in the passages quoted from the Charter of the United Nations. The Group reaffirmed that the obligations incumbent on Member States under those provisions of the Charter had been broadened by the more precise statement of rules contained in the Universal Declaration of Human Rights and in decisions of the International Court of Justice. It also stated that the provisions of the Universal Declaration should be recognized as formulating principles and setting international standards in the field of human rights under international law in view of the fact that they had been accepted by a very large number of States and international organizations.

24. Without prejudice to other provisions contained in international instruments, the Group took account of the resolutions adopted by the General Assembly at its forty-fifth session in so far as they related to its mandate. At its forty-fifth session, on 19 December 1990, the General Assembly adopted resolution 45/176 A on international efforts to eradicate apartheid, and 45/176 B, on concerted and effective measures aimed at eradicating apartheid.

25. The Group met from 2 to 13 December 1991 at the United Nations Office at Geneva to consider and adopt the present report, which was prepared in conformity with the mandate entrusted to it by the Commission on Human Rights and the Economic and Social Council under the resolutions mentioned above. The report is based principally on the information collected in the form of oral testimony, written communications from concerned organizations, official journals and communications, documents of the United Nations and specialized agencies, as well as works dealing with questions directly related to its mandate. In addition, the Working Group also resorted to relevant reports available from the local and international press.

E. General comments

26. The Ad Hoc Working Group, fully aware of the origins and gravity of the existing apartheid system, commends the positive changes that have taken place in South Africa since 1990, by which a considerable number of political prisoners were released, political organizations were unbanned, the state of emergency was lifted and the Separate Amenities Act was repealed. It commends also the decision of the Government of South Africa to repeal some of the entrenched discriminatory acts considered as pillars of the apartheid system and the consequent repeal of the Land Acts of 1913 and 1936, the Group Areas Act and the Population Registration Act.

27. The Working Group notes with satisfaction that, according to government sources, death sentences are no longer compulsory for certain types of crime. It further notes that the notorious section 29 of the Internal Security Act has been amended, abrogating the permission for indefinite incommunicado detention. The Ad Hoc Working Group notes further that the practice of carrying out death sentences seems to have changed for the better and that the state of emergency has been lifted. The Group welcomes the Labour Relations Amendment Act of 1991 which permits the creation of multiracial trade unions and reinstates the right to strike.

28. The Working Group is of the opinion that there is still an entire codex of discriminatory laws which must be abolished (see annex I for examples). Detention on remand of up to 10 days without judicial control and preventive detention of up to 14 days, periods which can be extended by application to the Supreme Court, are among the main elements which continue to infringe on personal liberty and security. In addition, the Group regrets that the Public Safety Act is still being used to declare "unrest areas", where measures similar to the state of emergency laws continue to be imposed. The Working Group is further of the opinion that the right to life is endangered by the system of capital punishment and that a moratorium to suspend the execution of death sentences is not enough to guarantee this right. It would appear that the moratorium on death sentences imposed last year has expired and, in principle, executions can be carried out at present in South Africa.

29. The Group is shocked by the acts of violence committed in provinces of South Africa, especially in Natal and Transvaal. In particular, the reported partiality of security forces, which was implied by the admitted government funding of the Inkatha Freedom Party, in combating the unrest in the provinces is a matter of concern regarding police ethics, which need to be studied in depth and improved.

30. The administrative and political structure of the bantustans in its present form is an element of the apartheid system which remains untouched. The Group believes that the constitutional reform process must consider the abolition of the bantustan system, which has created economic, political and human rights problems.

31. The educational system, which has always been of particular concern to the Group, must be freed from discriminatory structures because the non-racial education of the country's youth is crucial to the future of South Africa.

32. The important role played by the international community in supporting the struggle of the people of South Africa has had a great influence on the recent events. The international community should continue to exert political and economic pressure on the South African Government and should remain vigilant in its insistence on the removal of the remaining obstacles to peace.

33. The Ad Hoc Working Group of Experts expresses the hope that the South African Government, in a spirit of cooperation with the United Nations, will authorize it to visit South Africa to enable it to ascertain the facts and to report on the progress made in the abolition of the apartheid system.

I. RIGHT TO LIFE, PHYSICAL INTEGRITY AND PROTECTION FROM ARBITRARY ARREST AND DETENTION

Introduction

34. According to testimony provided by the Human Rights Commission of South Africa (HRCSA) at the 809th meeting of the Ad Hoc Working Group in London, the violence which had ravaged the Natal community for over four years moved to the Pretoria-Witwatersrand-Vereeniging region. Further, the violence had the effect of destabilizing communities and preventing meaningful political organization. HRCSA monitoring had shown that trends in repression had shifted to an alarming increase in informal repression, particularly by vigilantes or defenders of the apartheid-created structures of the so-called "homelands" and black local authorities (see annex II). The witness went on to say that the violence had taken a three-pronged approach: vigilante-related action, which had terrorized communities in a very brutal manner, causing many deaths and injuries; hit squads, consisting of individuals who have targeted attacks on liberation movement leaders and, in some cases, also their families; and security force action. The witness said that it was more difficult to pinpoint the latter's role, but that there had been numerous allegations that members of the police and of the South African Defence Force had aided vigilantes or simply not responded when attacks occurred. The witness then referred to the media reports concerning the funding of the Inkatha Freedom Party by the Government of South Africa.

35. According to HRCSA records, during the period June 1990 to June 1991, 200 persons had been killed and 1,600 injured as a result of security force action. Their records further showed that 2,641 deaths and 4,085 injuries had arisen out of vigilante-related incidents. During the same period, 34 deaths and 42 injuries had been attributed to hit squads. Furthermore, the same witness said that, during the period in question, 29 deaths and 246 injuries had been recorded as resulting out of right-wing action.

36. During January to May 1991, according to reports into informal repression submitted by the Independent Board of Inquiry into Informal Repression (IBIIR), 327 persons were killed in the townships, including 48 allegedly killed as a result of security force action. It was further reported, in the IBIIR Bulletin of 12 May 1991, that statistics prepared by the Community Agency for Social Equity (CASE) showed that Inkatha attacks were responsible for 66 per cent of the reported acts of violence in the Reef. In 92 cases out of the 146 analysed, responsibility for the use of weapons was attributed to either the Inkatha Freedom Party or ANC supporters; in 82 cases, weapons were attributed to Inkatha supporters.

A. Right to life

37. It was reported in the International Herald Tribune and The Guardian of 14 January and The Star of 16 January 1991, that gunmen using automatic weapons fired on mourners during a vigil on 12 January 1991 for a slain ANC youth organizer, Mphekeleli Christopher Nangalembe, killing 35 persons and wounding 40. Survivors alleged that Inkatha supporters had been responsible for the shooting and accused the police of complicity, since no protection had

been provided for the vigil despite prior requests. The police, however, claimed that officers had been sent but were asked to leave. This was reportedly denied by the ANC regional chairman, Mr. Kgalanthe Motlanthe.

38. The Weekly Mail of 18-24 January 1990 reported that residents of 2 squatter camps in Katlehong, where 11 people were killed and more than 10 injured in a night raid on 24 January carried out by a group of armed men, claimed that white men had taken part in the attack, using hand grenades and AK-47 and R1 rifles. A member of the residents' committee, Mr. T. Mdlakamela, alleged that residents had prior knowledge of an attack and were meeting to discuss their defence when they were attacked. Police claimed that while they were patrolling the area, about 150 men attacked the Mandela squatter camp and the police had fired tear-gas and birdshot to disperse them.

39. The International Herald Tribune and The Guardian of 1 February 1991 carried reports that a battle had erupted between thousands of ANC and Inkatha supporters in the Natal township of Umgababa, leaving at least 8 people dead and 60 wounded, according to police reports. The Weekly Mail of 1-7 February 1991 reported a statement by ANC Southern Natal convenor, Mr. Jacob Zuma, and the Inkatha national chairman, Mr. Frank Mdlalose, that they had agreed to adopt a united approach and that a joint investigative team would report back to them on the incident.

40. The Times of 12 February 1991 reported the killing in Natal of 17 persons as the buses in which they were leaving a prayer meeting attended by thousands of Inkatha supporters were ambushed by gunmen firing from both sides of the road.

41. The Guardian of 19 February 1991 reported on the trial of four white pupils from Dale College, one of South Africa's best-known schools, who pleaded guilty to culpable homicide arising from an incident in which a 70-year-old black man was beaten to death at the Frank Joubert Hostel where they were boarders. The boys, all members of the "Frank Joubert Kaffir-Bashing Society", allegedly found Mr. Tom Ruiters sleeping on the far side of the school fence, threw him over it and assaulted him with an assortment of weapons. The trial, which was adjourned, came in the wake of a controversial sentence in the case of a black man who had been scalded to death after being pushed into a steam cleaning machine. His white assailants, Mr. Kenneth Westermeyer and his nephew, Mr. Johannes Westermeyer, had been found guilty of assault and fined R 500 and R 200, respectively.

42. The Times and Le Monde of 19 March 1991 reported that 18 people had been killed and more than 50 injured on 17 March when fighting erupted in Alexandra township and spread to a migrant workers' hostel in the city. The clashes had allegedly been precipitated by the murder of two men on their way to a rally. This was reported to have brought the death toll to 200 since the signing at end-January of a peace accord between Mr. Mandela and Chief Buthulezi. On 17 March 1991, Inkatha had exhorted the inhabitants of the townships to lay down their arms and respect the accord.

43. It was reported in The Guardian of 25 March 1991 that 11 persons had been killed and nearly 30 injured in a clash on 24 March when police moved to prevent an unauthorized ANC meeting in Daveytown, a black township east of

Johannesburg. One white police sergeant had been killed in an attack by blacks armed with knives, machetes and sticks; the other 10 victims had been killed by the police. The police claimed they were attacked by about 250 men and had to use their guns in self-defence.

44. Alexandra was the scene of another killing, according to The Times and The Guardian of 28 March 1991, when about 20 khaki-clad gunmen opened fire with AK-47 rifles and revolvers on sleeping mourners at a prayer vigil on 27 March for a woman who had been shot in the same house two weeks earlier. The men then attacked survivors with pangas and knives, leaving at least 15 dead, including 9 members of the bereaved family, and 18 seriously wounded. The dead included several teenagers, an 8-year-old girl and a baby of 9 months. Survivors claimed that when they had asked for police protection after seeing a group of men in the area acting suspiciously, the police had come to the house but ignored pleas to leave a guard. Police reportedly confirmed having received a call for help but denied having been asked to maintain a security presence.

45. The Independent and The Times of 5 April 1991 reported the arrest of 24 men in connection with the township violence which had claimed 1,200 lives in the previous 7 months. Eight persons were detained in connection with the killings at the Alexandra prayer vigil (see above), including Mr. Dixon Mbatha (27), who was charged with murder. The others were held after killings in Natal in which at least 25 persons died. Meanwhile, Mr. Patrick Majozi, a Zulu chief in the Richmond area near Durban, reported that 6 members of his community, including an 8-year-old girl, had been killed.

46. The Independent of 7 May 1991 reported the death of at least 52 persons in township violence during the weekend of 4-5 May.

47. According to The Guardian and The Independent of 5 May and the Weekly Mail of 5-11 May 1991, Mr. Eugene Marais (28), a member of the Afrikaner Weerstandsbeweging (AWB) and Orde Boervolk (Order of the Boers), was convicted of firing an assault rifle on a crowded bus in Durban, killing 7 black passengers and injuring 27. The presiding judge, Mr. Justice Hugo, allegedly expressed the opinion that this would serve as a message to the country that violence would not be tolerated by the courts.

48. The Times, The Independent and The Guardian of 13 May 1991 carried reports of a pre-dawn raid on 12 May by up to 1,000 Zulus on a Xhosa squatter camp outside Kagiso, near Johannesburg, in which at least 25 persons had been killed and 30 injured. Residents of the Swanieville camp alleged having seen police in armoured personnel carriers escorting raiders towards the camp.

49. The Guardian article added that the Swanieville raid came 24 hours after police had opened fire on hundreds of white farmers at Venterdorp, home of Mr. Eugene Terre Blanche, leader of the Afrikaner Resistance Movement, who was reportedly seen leading the whites in trying to drive some 400 black squatters out of a government-owned farm on land from which they had been forcibly removed 13 years before. When some whites reportedly tried to bulldoze their way through the squatters' shacks, the police apparently opened fire, wounding two of the farmers. The fight was defused only when Mr. Adriaan Vlok, Minister of Law and Order, arrived by helicopter. Simultaneously, another

group of whites was reported to have attacked a squatter camp at Tshing township, allegedly injuring 14. Professor Alf Stadler, head of the Department of Politics at Witwatersrand University, was reported to have said that the security forces had crossed an important political boundary. "It is a long, long time since the police fired on whites, but it was a crucial issue for any reform whether the police would do it and at their traditional base - the farmers."

50. On the same subject, according to the Weekly Mail of 24-29 May 1991, Lawyers for Human Rights (LHR), the Independent Board of Inquiry and the Witwatersrand Centre of Applied Legal Studies addressed a document to President De Klerk and Law and Order Minister Adriaan Vlok, detailing allegations made by Swanieville residents, who claimed police were present and failed to act and that there had been direct police involvement on the side of Inkatha attackers. Mr. Ahmed Motala, LHR director of litigation, was reported to have said that statements had been taken immediately due to political urgency and to avoid collusion on the part of eyewitnesses. The document reportedly charged that almost half the witnesses alleged having seen police vehicles in the area, either just before or just after the shooting, and that several persons alleged that "white men were escorting the attacking group prior to" its retreat. A number of witnesses claimed having seen police in camouflage uniforms or other white men, out of uniform, among the attackers. Many survivors reportedly claimed that when they "tried to run away from their attackers they were forced to return to the camp by members of the security forces". They also charged that police in the area were unwilling to help.

51. The Times and the International Herald Tribune of 26 June 1991 carried reports that at least 6 persons had been killed and 18 wounded when gunmen opened fire on a crowded Soweto commuter train on 25 June. Three women and two men were shot dead, while a third man died jumping from a carriage.

52. The Weekly Mail of 28 June to 4 July 1991 reported that, on 30 May 1991, charges against the presumed perpetraters of the 13 September 1990 attack on a Johannesburg commuter train, which left at least 20 dead and over 100 injured, were withdrawn after police failed to find sufficient evidence to proceed with the case. As regards the Sebokeng massacre (39 dead and at least 13 injured) on 12 September 1990, it was reported that there was a strong Inkatha presence in court and that Inkatha representatives testified that they would be prepared to pay bail of up to R 1,000 for each accused; however, the State successfully opposed three bail applications and the case was postponed to 4 July 1991. A lawyer for the families of the victims, Anton Steenkamp, was reported as saying the case was "one of the few where there's been good cooperation from the police". As follow-up to the Alexandra township killing of 27 March 1991, it was reported that eight men had appeared in the Wynberg Magistrate's Court, where they were refused bail. They were due to appear in court again on 1 August on charges of murder and attempted murder.

53. The same source reported new evidence that a second gang was involved in the attack on a Johannesburg-bound train on 25 June 1991 which left at least 6 dead and 18 injured. After a group of armed men randomly opened fire on the commuters, some of whom were conducting a prayer service, a second gang of gunmen emerged from the veld behind Nancefield hostel and opened fire on those

trying to escape. The armed men, who were apparently in their early twenties and did not speak as they shot, were described by witnesses as being highly organized.

54. It was reported in The Sowetan of 5 July 1991 that Constance Sotsu (49), her daughter Margaret (33) and grandson Samanta (4), were shot dead on 3 July when gunmen armed with AK-47 rifles and petrol bombs attacked the house of an ANC education officer at Boipatong, Vanderbijlpark. Ms. Sotsu's daughter and an anonymous source confirmed having recognized the killers. According to SAP media liaison officer for the Vaal, Captain Piet van Deventer, AK-47 cartridges had been found at the house and an investigation was under way.

55. The Sowetan of 8 July 1991 reported that, as a result of the above killings, police were on 24-hour guard duty outside at least 12 homes of ANC officials in the Vaal Triangle. Police were reported to have offered a R 20,000 reward for information leading to arrests.

56. It was reported in The Sowetan of 9 July 1991 that 5 persons were killed and at least 10 injured on 7 July when 2 men armed with AK-47s opened fire on about 100 patrons in a tavern at Sebokeng. Witnesses alleged that a man seen in the area before and after the attack had also been seen at the scene of the Boipatong killings on 3 July 1991. The police confirmed that the same man had been released on bail after the 23 February 1991 massacre at an ANC vigil.

57. The Sowetan of 10 July 1991 reported the assassination on 8 July of Mr. Michael Mapongwana, Chairman of the Western Cape Civic Association, by four masked gunmen who forced his car to slow down before shooting his driver. His brother, who was in the car, alleged that the men had chased Mr. Mapongwana, thrown him to the ground and shot him at point-blank range. This followed an attack on his house on 6 July 1991 and two previous attempts on his life. His wife was killed in a petrol bomb attack on their house in October 1990. The article announced the appointment of a special investigation team led by Athlone district Criminal Investigation Department chief, Colonel L.P. Fourie.

58. The Sowetan of 15 July 1991 reported that a Messina farmer would stand trial following an incident on 9 December 1990 when he allegedly doused a 15-year-old black boy with petrol and set him on fire, provoking third-degree burns necessitating a skin graft. The case had aroused great controversy after police arrested the boy and kept him under police guard in Limpopo Hospital, asserting that the burning had been an accident. The Sowetan reported that investigations had only been carried out after it had queried the police version. The case reportedly made further headlines when the boy was prematurely discharged, swathed in bandages and unable to walk, and transferred from the hospital in the back of a police van (see also para. 127).

59. On the same subject, an article in The Independent of 4 October 1991 reported that the farmer, Mr. Johan van der Westhuizen, was found guilty of attempted murder at his trial in September 1991, after he had allegedly admitted to assaulting the boy, welding his feet and hand to a steel table, dousing him with petrol and setting him alight with sparks from the welder. A policeman who had been called to the scene reportedly assaulted the boy before handcuffing him and taking him to the police station, where he was kept for

several hours before being taken to hospital. The policeman reportedly was not charged. Mr. van der Westhuizen was reported to have been allowed to go free after paying a R 5,000 fine and promising to pay R 40,000 damages.

60. At its 809th meeting in London, a witness testified before the Ad Hoc Working Group on behalf of the International Commission of Jurists (ICJ). In his testimony, he referred to a fact-finding visit he had made to South Africa in 1990 and the information he had gathered in Natal, especially in respect of the increasing violence there which had led to large numbers of deaths. He said that in interviews with police officers, it was discovered that they had been trained to see the African National Congress (ANC) as an enemy to be sought out and killed. In spite of the fact that President De Klerk had unbanned, inter alia, the ANC and the Communist Party earlier in the year, police attitudes had not undergone an equivalent change; however, he said, there were undoubtedly many good policemen, who were pointed out both by the Attorney-General and his staff, and by the many human rights lawyers working in the field. The witness considered that the judicial system, on the other hand, worked reasonably well and permitted unhindered legal representation.

61. The witness referred in detail to the violent incidents which had taken place in the valley outside Pietermaritzburg on 27 March 1990 (see E/CN.4/1990, para. 80). After discussions with Mr. David Ntombela, Mr. Pierre Cronje (a Democratic Member of Parliament) and others, it was the opinion of the witness that there had been no intervention of any kind by the police, or by the paramilitary, when large numbers of armed Inkatha members marched into the Vulindela valley and went on the rampage, killing and burning everything in sight. Further, although the local army commander had been forewarned, nobody had intervened, because the KwaZulu police did not ask for help.

62. The witness showed the members of the Working Group a photograph of 2 children, aged 9 and 14 years, whose parents had been killed in Kwamakhuta, KwaZulu, south of Durban. They lived about 100 yards from a KwaZulu police station, where the matter was reported, but no one had come to investigate the incident. Much later in the night, the South African police did come to investigate, but no proceedings of any kind had ever been brought, even though the assailants were known, since the children's father had recognized them and called them by name before being murdered. Within a few weeks of this incident, the KwaZulu police from the same police station had fired indiscriminately into a crowd, which included a sergeant in the South African police force. The witness said that Mr. Christian Ahlund, from Sweden, and Dr. Jeremy Sarkin, a lawyer from South Africa, had joined him on the fact-finding mission. Natal had been chosen because, from 1986 to 1990, violence in that State had assumed very serious proportions. The witness said that one of the things he wished to stress was that the conflict was not a tribal one, since 95 per cent of the black people in Natal were Zulu. About 90 per cent of the ANC members were Zulu, and Zulus had been killing other Zulus.

63. The Sowetan of 16 August 1991 reported the murder at Khayelitsha during the night of 15-16 August of the wife and three children of Mr. Solomon Tshuku, chairman of the ANC Site C branch, when their shack was set on fire in an arson and shooting attack. A 9-year-old daughter was the only survivor.

64. The Guardian of 18 September 1991 reported the death in Johannesburg of a man hacked to death by hostel residents as a crowd of Inkatha supporters brandishing "traditional" weapons passed the hostel on a march through the city to pay homage to two of their leaders. The incident reportedly occurred soon after the signing of the peace pact between the Government and more than 20 political organizations. At a press conference, President De Klerk was reported to have said that the Inkatha supporters had not received police permission to march through the streets but that since Johannesburg was not an "unrest area", it had not been unlawful for them to carry "traditional" weapons. Mr. Mandela at the same conference reportedly claimed that police had confiscated spears and clubs from ANC supporters in a township near Johannesburg the previous day and alleged that different standards were being applied to ANC and Inkatha. It was reported that the accord's code of conduct for political parties prohibited the carrying of weapons, without stipulating whether this included "traditional" weapons. President De Klerk reportedly undertook to issue a proclamation with the necessary definition after consultation with the relevant parties.

65. According to information received from Amnesty International on 4 October 1991 and widely reported in the world media, Mr. Sam Ntuli, General Secretary of the Civic Associations of the Southern Transvaal (CAST) and member of the National Union of Metal Workers of South Africa (NUMSA), who was a prominent community leader of Thokoza township, was assassinated on 29 September. It was reported that a group of heavily armed men, who had arrived earlier in two cars, were waiting outside his house and shot him as his car drove up. It was further reported that other community activists, including Mr. Louis Sibeko, General Secretary of the Thokoza Civic Association (TCA), were similarly under threat. A car reputedly used by Inkatha members known to have carried out attacks against residents of Thokoza and the neighbouring squatter camp in late 1990, allegedly with active police assistance, was reported to have been seen waiting outside the homes of various TCA leaders.

66. In a follow-up to the above case, The Independent of 28 October 1991 reported an interview with August Khoza, a 15-year-old Mozambican refugee, who had allegedly witnessed the killing as he was sitting by the roadside welding an exhaust pipe. The boy claimed he would be able to identify one of the killers. Mr. David Dyson, the Ntuli family lawyer, was reported to have placed Khoza under ANC protection, but the "safe house" in Soweto to which he had been taken was raided by police four nights later.

67. An article in The Guardian of 25 October 1991 reported on a study conducted by the independent Community Agency for Social Enquiry, analysing political violence reported by the press and monitoring organizations in the year ending July 1991. Its findings revealed that about 50 per cent of all such incidents had been carried out by Inkatha and 25 per cent by the police, with other groups, including the South African military, being blamed for less than 5 per cent. In 257 cases of violence, 370 attackers had been identified; 190 of them belonged to Inkatha, 84 to the police, and 13 to ANC. Eighty-seven per cent of those who died as a result of political violence were ordinary citizens, not identified with any political grouping. The study showed that 40 per cent of political killings were carried out by Inkatha-supporting migrant workers in squatter camps, and Inkatha supporters

were also held responsible for 20 out of 32 train attacks. Finally, the study revealed that in 46 of the 257 cases, collusion had been established between Inkatha and the police. A senior researcher with the agency, Dr. David Everatt, was reported to have commented, "The aim seems to be to destabilize black South African life and to prevent the establishment of a normalized political climate".

B. Capital punishment and executions

68. It was reported in The Independent of 28 February 1991 that, on 27 February, ANC and human rights organizations had issued a condemnation of the Government for having lifted a moratorium on hangings which had been announced by President De Klerk 15 months earlier.

69. According to information received from the Human Rights Commission of South Africa (HRCSA), after some of the apartheid legislation had been repealed, the emphasis shifted from the more overt, identifiable forms of repression to less identifiable forms. Referring to repressive legislation during the period June 1990 to June 1991, HCRSA reported that, since the abolition of the mandatory death sentence under the Criminal Law Amendment Act No. 107 of 1990, 27 persons had been sentenced to death, of whom three fell into the category of political prisoner. When cases were reviewed by the panel established for that purpose, 17 cases were commuted, of which 14 were alleged to be in relation to political prisoners. No executions had taken place for more than 18 months.

70. Information was received from HRCSA on 10 November 1991 that Mr. Flippie van Rooyen (30) had been sentenced to death on 6 November at the Louis Trichardt Circuit Court for the murder of Naina Ndou on 14 June. It was reported that this brought the total number of persons on death row to 337, of whom 17 were considered by HRCSA to be there for politically related reasons.

C. Deaths in detention and in police custody

71. It was reported in the Weekly Mail of 20 December to 1 January 1991 that, following disclosure of the death in December 1990 of Mr. Bethuel Maphumulo while in custody of the Soweto Murder and Robbery Unit at Protea Police Station, a female relation of the victim filed a charge at Moroka Police Station, alleging that police had assaulted and tortured both Mr. Maphumulo and herself.

72. Referring to the same case, the Weekly Mail of 11-17 January 1991 reported that a post mortem allegedly showed abrasions on the victim's body and limbs, and a fracture of the hyoid bone in the neck "highly suggestive of manual strangulation". This appeared to conflict with a statement made to the victim's attorney by a Colonel Oosthuizen, claiming that in an attempt to escape, Mr. Maphumulo had fallen into the swimming pool and drowned. In a statement, Mr. Maphumulo's relative reportedly stated that she had been picked up by "two white and three black policemen" in civilian clothing, accompanied by the victim, who was handcuffed and in leg irons. She claimed having been tortured and forced to watch while Mr. Maphumulo was tortured.

73. The Weekly Mail of 28 June to 4 July 1991 reported revelations arising from a personal inquiry into police abuses conducted by Deputy-Commissioner of Police Lieutenant-General Mulder van Eyk, that the inquests into the death in detention of a black man shot by a local police sergeant in September 1989, of Nixon Phiri in January 1990 and of Lesley Majola in July 1990, had been held in the absence of family lawyers. Human rights lawyers were reported to have expressed concern that secret inquests were taking place in cases where police conduct was under scrutiny.

74. The Weekly Mail of 26 July to 1 August 1991 reported on the ongoing inquest into the death in June 1990 at Potgietersrus police station of teacher and lay preacher Donald Thapelo Madisha (27) while in solitary confinement under section 29 of the Internal Security Act. Testimony reportedly revealed several disquieting factors. Although section 29 regulations stipulate hourly recorded visits to check on a detainee, the register showed gaps as long as 14 hours. While Captain Leon Marius Luiters, commander of the police station, had made a sworn statement that Madisha had made no complaints, it was alleged that records showed the contrary. Further, it was reported that police records of the time at which Madisha was found dead had been altered several times.

75. The same article reported that the State was clearly taking the inquest very seriously indeed. The National Medical and Dental Association had sent its national director, Dr. David Green, to observe proceedings while Amnesty International was represented by Dr. Derrick Pounder, Chairman of Physicians for Human Rights. Madisha's family reportedly intended to sue Dr. van den Berg for negligence in failing to carry out adequate medical examinations, make an appropriate diagnosis, keep medical records and provide adequate instructions for the safe-keeping of the deceased.

76. According to reports in The Sowetan of 5 July, The Star of 6 July and the Weekly Mail of 5-11 July, as well as information received from Amnesty International dated 9 August 1991, at the request of the media and human rights groups and lawyers, high-powered investigations were initiated, headed by Major Stear, Assistant District Investigating Officer in Klerksdorp, into the activities of officers at Welverdiend police station, who had been repeatedly accused of the torture and extrajudicial execution of potential witnesses (see also E/CN.4/1991/10, paras. 109 and 226). The Star of 6 July recalled the alleged deaths in detention at Welverdiend police station of: Nixon Phiri (16) in January 1990, Mac Mothupi and Thomas (Simon) Tshabalala (22) on 4 and 7 March 1991 respectively, Benjamin Tshoba and Patrick Mogani during a protest about Phiri's death, Eugene Mbulawa (15) on 13 July 1990, William Makajai (17) on 9 May 1991, Richard "Pictureman" Dodo on 19 October 1990, and Themba Golotile on 14 November 1990. Other persons reported to have been killed by Welverdiend police were: Sipho Mangeni, in November 1990; Motohabi Nyathi and Shorty Phetu, in December 1990 and February 1991, respectively; Ephraim Molefe, in January 1991; Aaron Mthembu, in February 1991; Shadrack Martoung, in May 1991; and Abel Tshoba, in April 1991. The Weekly Mail of 5-11 July 1991 reported that police claims that the killings had occurred in "unrest action" had been contradicted by local community leaders, who claimed that gang warfare had been encouraged by the supply of guns and money to vigilante groups by security forces.

77. It was reported by the Human Rights Commission of South Africa (HRCSA) in its Human Rights Update for July 1991 that two Vaal Triangle men had allegedly died in police custody in separate incidents on 23 July. Mr. Cornelius Maqoma (37), a liquor trader from Sebokeng, reportedly died a few hours after being arrested by members of the Murder and Robbery Squad. Mr. Peter Masilo (40) was said by a police liaison officer to have collapsed and died in Sharpeville police station when force was used to bring him into the charge office after he had resisted arrest. It was reported that an inquiry was being made.

78. The Human Rights Update of August 1991 reported that Mr. Aaron Mahalangu, a member of ANC, had allegedly died after being taken into custody by the Belfast police during the first week of August. He had been arrested with three others after allegedly staging a "takeover" of the Siyathuthuka police station. Belfast police station commander George Ruthven was reported to have stated that Mr. Mahlangu, who he claimed had died of diabetes, had assaulted police with a shotgun at the police station and had resisted arrest. Mr. Mahlangu's sister-in-law, Ms. Lina Mabuse, reportedly declared that the deceased had been physically fit at the time of the arrest and that she had been refused permission to see the corpse at the government mortuary.

79. In the Human Rights Update of September 1991, it was reported that an inquest into the death in police custody of Motseki Molaoa (17) had begun during the last week of September at Kroonstad Magistrate's Court. Molaoa was reportedly injured by rubber bullets when police dispersed an allegedly illegal demonstration in Phomolong township by pupils of Bahale Secondary School on 6 March 1990. It was reported that he had been arrested with six other pupils and held at Hennenman police station, where they reportedly did not receive any medical attention. One pupil alleged that despite their injuries, they were also assaulted by the police. They were reportedly refused bail. The condition of Molaoa reportedly deteriorated and, when he was taken to Boitumelo Hospital in Kroonstad, he was certified dead on arrival.

80. Information was received from the Mefikeng Anti-Repression Forum (MAREF) on 17 October 1991 concerning the death on 15 October, while in detention in Bophuthatswana Central Prison at Rooigrond, of Rabusang Blackmamba Monnana, one of the 147 political prisoners still being held by the Bophuthatswana authorities. Mr. Monnana (37) was reported to have been sentenced to two years' imprisonment on 17 August 1990 on charges of public violence for his part in the conflict between Leeuwfontein village and the Bophuthatswana authorities over its incorporation into the so-called "homeland". MAREF claimed that, while the results of the autopsy were not yet available, there were indications that Mr. Monnana would still have been alive if he had received proper medical attention in the days leading up to his death.

81. The Human Rights Commission of South Africa (HRCSA) reported on 30 October 1991 that a Johannesburg inquest court had found Sergeant Jacobus Postma, Constable Marthinus Smit and Constable Edwin Mkopane criminally liable for the death of a prisoner awaiting trial, Mr. Uys Namane, in the Hillbrow police station cells on 13 to 14 February 1990. A post mortem had revealed that Mr. Namane was suffering from tuberculosis, an enlarged heart, bronchopneumonia and anaemia. The inquest magistrate found that the

policemen knew the deceased had to receive urgent medical attention and yet, despite being called to Diepkloof Prison to take him to hospital, they had taken him to Hillbrow police station, where he had been found dead the following morning.

82. On 31 October 1991, Amnesty International reported to the Ad Hoc Working Group that Mr. Solly Maele Mogashoa, a school teacher and active member of the South African Democratic Teachers Union (SADTU), had died in detention on 14 October while in custody at Namakgale police station, north-eastern Transvaal Province. He had been arrested at a township club by members of the Lebowa "homeland" police based in Namakgale who, according to eyewitnesses, reportedly assaulted him. The following morning, the police announced to Mr. Mogashoa's school principal that he was dead. It was reported that a post mortem examination had been conducted on 16 October by a State pathologist, Dr. Laubscher, whose findings had not yet been made public. However, on 24 October, Dr. Jonathan Gluckman conducted a private post mortem examination on behalf of the victim's family. His findings were reported to be as follows: "The deceased suffered, inter alia, fractured skull, fractured ribs, sub-dural haemorrhage and multiple bruises and swellings, and the inference drawn is that the deceased was beaten up and died as a result". Concerning the same incident, the Human Rights Commission of South Africa (HRCSA) on 30 October reported a Lebowa police spokesperson as saying that investigations were being made into charges of assault against several policemen but that no one had yet been charged. This case was reported to have brought the total number of deaths in police custody since 1 January 1991 to eight.

D. Cases of torture and ill-treatment

83. Testimony was given by representatives of Amnesty International at the 810th meeting of the Working Group in respect of allegations of assault and torture of political and other detainees, particularly at the following police stations: Welverdiend (Western Transvaal), Protea (Soweto), Brixton (Johannesburg), and at various police stations in the so-called "homeland" of Bophuthatswana.

84. The same witnesses referred to a "Special Task Force", appointed by the State President and led by police Major-General Ronnie Van der Westhuyzen, which has commenced investigations into unlawful police conduct in the area, pursuant to persistent allegations of failure on the part of the authorities to investigate impartially allegations of involvement by police and other members of the security forces in the torture of political and other detainees, sometimes resulting in death.

85. In relation to the inquiry into the activities of the Welverdiend police force (see para. 76), written information received from Amnesty International dated 9 August 1991 stated that in late July 1991, Frans Mahuma, Thomas Mavundle, Thomas Monene and Elliot Rampau had been tortured while in the custody of the Welverdiend police in an effort to make them admit to crimes they claimed they had not committed (see also para. 118).

86. An article appearing in The Independent of 7 October 1991 reported that Mr. Israel Mabote, an ANC youth leader from Thokoza, was taken from his home between 3.00 and 4.00 a. m. on 30 September by 12 policemen, five of whom were allegedly wearing Inkatha T-shirts under their uniforms. He claimed to have been taken to a farm where they tried to force him to admit to the killing of Inkatha members during the 8 September Thokoza massacre and to that of Mr. Sam Ntuli (see para. 65). When he refused to do so, eight policemen took him to an abandoned mine, where they reportedly tortured him. After intervention on the part of Mr. Mandela and other ANC leaders, he was released on 1 October, with the threat that he would be hounded.

E. Political trials

87. It was announced in The Independent of 30 May 1991 that the Appeal Court had reversed the death sentences imposed on 26 May 1989 on the 14 blacks known as the "Uppington 14" and that 11 of them had been released from death row. Of the original 25 convicted of murder in April 1988 under the doctrine of common purpose, it was reported that 21 convictions had been overturned. Of these 21 accused, 18 had reportedly been found guilty of "public violence" and received suspended sentences, and one woman and two men had been acquitted. Of the four whose murder convictions stood, one was reported to have received an 8-year sentence, two had received 10 years and one 12 years.

88. According to testimony submitted to the Working Group at its 809th meeting by the Human Rights Commission of South Africa (HRCSA), political trials continue under the Internal Security Act, other legislation and the common law. It was reported that during the period June 1990 to June 1991, over 900 trials, involving 5,010 accused, were completed. Of these accused, eight persons (0.15 per cent) paid fines after pleading guilty, and 673 persons (13 per cent) were convicted, of whom 74 received prison sentences. Of the remaining 87 per cent, 741 (15 per cent) were acquitted, 128 (2.5 per cent) were discharged after presentation of the State's case, 121 (2.5 per cent) were granted indemnity during their trial, and charges against 3,330 (66 per cent) were withdrawn before the trial started.

F. Death squads and complicity of security forces

89. It was widely reported that General Lothar Neethling had lost his defamation suit against Vrye Weekblad and the Weekly Mail when judgement was pronounced by Mr. Justice Kriegler. According to reports published in the Weekly Mail of 25-31 January 1991, it was claimed that the judgement provided strong grounds for the State to consider criminal action against several top policemen. The judgement reportedly invoked a controversial finding on the facts: that Captain Dirk Coetzee's allegations concerning death squads were probably correct; that General Neethling had probably lied and misled the court; and that the standard of proof required from the defendants (i.e. the two newspapers) was the less heavy "evidentiary burden". This decision was hailed as an important victory for press freedom, and it was claimed that if the Appellate Division upheld the decision, it would be binding on the whole country (see E/CN.4/1991/10, para. 119).

90. A report in The Guardian of 21 February 1991 alleged that the Civil Co-operation Bureau (CCB) had spent millions of rands after its official dissolution. The alleged disclosure by the Auditor-General, Mr. Peter Wronsley, came shortly after the parcel-bomb murder of ANC lawyer Mr. Bheki Mlangeni, who had been monitoring the activities of suspected State assassins (see para. 98). In a recent statement, Defence Minister Magnus Malan reportedly maintained that CCB had ceased to exist in February 1990; however, in a report on CCB, the Auditor General allegedly found that it had spent more than R 12.5 million in the 1989/90 financial year, of which R 11.8 million had not been initially authorized. Mr. Wronsley claimed to have received a certificate from the Chief of the Defence Force, dated 20 September 1990, retrospectively authorizing expenditure of R 11.8 million on CCB ultra-sensitive projects. Mr. Wronsley reportedly said that the final decision on whether "ex-post-facto" certification was acceptable lay with the Parliamentary Joint Committee on Public Accounting, which was reputed to be dominated by President De Klerk's ruling National Party.

91. The "Apartheid Barometer" appearing in the Weekly Mail of 5-11 April 1991, quoted a statement in Parliament by the Minister of Law and Order, Mr. Adriaan Vlok, that 11 members of the South African police had been convicted of murder in 1990, 35 of culpable homicide, 77 of assault with intent to do grievous bodily harm, and 295 of common assault. He was reported to have said further that, in 1989, 29 had been convicted of murder, 45 of culpable homicide, 136 of assault with intent to do grievous bodily harm, and 338 of common assault.

92. The Sowetan of 3 July 1991 reported that the three policemen incriminated by Mr. Butana Almond Nofemela in the CCB killing of Mr. Japie Maponya in September 1985, Colonel Eugene de Kock, Constable Joseph Mbelo and Constable B.M. Ndzimande, would give evidence in camera at the inquest on the dead man. Pretoria District Magistrate Mr. K.D. Kruger granted the application in order to protect the physical identity of the witnesses at the request of the men's lawyer, Mr. P. Kemp, who alleged that one of his witnesses had been murdered after testifying before the Harms Commission.

93. An article in the Weekly Mail of 19-25 July 1991 reported that at least 20 ANC activists had been killed since the beginning of the year, either by sophisticated explosive devices, strategically placed marksmen or by ambush, which allegedly bore the hallmarks of the officially disbanded CCB. While investigations remained "ongoing", it was reported that ANC had demanded that the Government disband its death squads.

94. It was also reported in the Weekly Mail of 19-25 July 1991 that, despite police announcements of intensified patrols following the killing of family members of ANC official Rev. Ernest Sotsu in Boipatong, police had allegedly stood by and watched while more than 300 armed men attacked residents on 22 July. Mr. Thembalakhe Alpheus Khawuleza was hacked to death, but police made no arrests, even though the group was still carrying weapons including AK-47s, pangas and spears. Instead, they were alleged to have escorted the attackers back to their KwaMadala township hostel. Residents alleged that police took an hour to respond to telephone warnings of the attack.

95. Representatives of Amnesty International, giving evidence before the Working Group at its 810th meeting, spoke of the alleged complicity of the security forces in killings and other acts of violence against members and supporters of legitimate political parties, notably in the provinces of Natal and Transvaal. The nature of the alleged complicity, the witnesses said, ranges from a failure to act impartially to covert involvement in assassinations. The witnesses further testified that, in addition to those broad allegations regarding the conduct of the police, some human rights lawyers, opposition members of parliament and journalists have alleged for more than a year that the South African Defence Force (SADF) has been involved in training and supplying arms to the members of Inkatha. These allegations were reportedly given further weight by claims made by former Military Intelligence Officer Nico Basson in June 1991 that senior military officers, whom he named, were involved in supplying weapons and logistical support to Inkatha members for attacks against ANC members and township residents in the Transvaal. According to the testimony received, further allegations were made in July 1991 by Felix Isaias Ndimene, a former member of the "Special Forces" Unit, Five Reconnaissance Regiment. He alleged that members of his unit had carried out the attack against train commuters on 13 September 1990, in which 26 persons died, in addition to attacks against residents of Alexandra township, Johannesburg, and in Pietermaritzburg's townships in 1991.

96. At the Working Group's 808th meeting, a witness representing the Independent Board of Inquiry into Informal Repression (IBIIR), after describing how his organization had been created two years previously, informed the Group that it had investigated, inter alia, cases of assassination and bombing directed against anti-apartheid organizations. He said that, in addition to right-wing activities and the Reef violence, his organization was especially concerned with investigations into hit squads in the employ of the South African police and the South African Defence Force (SADF). The witness said that his organization became actively involved in hit-squad investigations when death-row prisoner Almond Nofomela signed an affidavit claiming that he had been involved in the killing of Durban human rights lawyer Griffiths Mxenge. Pursuant to details given by Nofomela regarding incidents of murder, abduction, assault, arson and theft, the Attorney-General of Orange Free State was appointed to investigate his claims. The IBIIR also decided to investigate and found much corroborative evidence supporting his claims. The witness said that his organization was able to obtain Botswana border-post documents, which the police had claimed were not available and which actually proved that Dirk Coetzee and Almond Nofomela had been in Gabarone, Botswana, at the time of an attack on an ANC house there. This was important because the documents implicated policemen who had continued to be employed by the South African police. Other documents showed that cars were stolen for a political motive. Although initially the allegations were denied, the police later admitted to having case numbers corresponding to the allegations quoted above. The witness said the IBIIR put before the Harms Commission all the evidence gathered, which resulted in a detailed disclosure of the existence of a police anti-terrorist unit and the Civil Co-operation Bureau.

97. The witness said that although it has been claimed that these units have been disbanded, some of the returning exiles have been picked up for interrogation or approached and questioned by "Askaris" (members of hit squads).

98. After discussing some of the findings of the Harms Commission, the witness referred to Mr. Bheki Mlangeni, who was killed in February 1991 by an explosive device hidden in a tape-recorder (see para. 90). The witness also referred to the death of six people during May and June 1991, who were allegedly killed by hit squads. One of them was a young Umkhonto we Sizwe soldier, whom police claimed to have shot while he was escaping, although according to the post-mortem report he had been shot in bed.

99. The same witness then proceeded to describe the involvement of his organization in respect of the Reef violence, which first started in July 1990 in Sebokeng, later spreading to Soweto, Thokoza, Katlehong and Tembiza, in East Rand, and then to Kagiso and Bekkersdal, in West Rand, claiming at least 2,000 lives.

100. Investigations first began because of the serious threat posed to the country's stability and the allegations of State involvement. The witness then spoke about the widely reported financial assistance by the security forces to the Inkatha Freedom Party for the purpose of organizing rallies and anti-ANC activities. Following the publication of these allegations, the witness continued, the Government admitted to the clandestine funding of R 250,000 when the Minister of Law and Order claimed that the Government had sponsored the Inkatha Freedom Party because of its stand against sanctions and violence.

101. Commenting further on the violence, the witness said that both the Xhosa and Zulu people are Ngoni people, with similar cultural and language backgrounds, and that the conflict is not black-on-black violence, as it is often described. Many eyewitnesses who escaped during the various attacks had described in their affidavits the presence of disguised whites. The witness referred to one such case when a white woman, in a statement released by the police in December 1990, said that she had witnessed an attack by armed men in a minibus. The attackers consisted of both white and black men, who attacked commuters. As soon as she was seen by the soldiers, she was also shot and later died in hospital.

102. The witness referred to many cases of allegations against the police for not taking action during the course of attacks, and referred to Mapheto township where residents, instead of receiving help, were tear-gassed and one of them was arrested. He also referred to allegations made by Father Peter Hawthorp, a Catholic priest, against the police who failed to disarm Inkatha attackers in Thokoza in August 1991.

103. The same witness said that his organization was aware of at least four occasions when police were warned of impending attacks but no protective measures were adopted by the police to help. The witness referred to an incident in Sebokeng in January 1991 as one of the most serious cases when, during a night vigil for Christopher Mandelene, an attack allegedly took place resulting in 39 deaths, although the family members and others had

sought police assistance prior to the attack. The police claimed that they had patrolled the area but were chased away by ANC marchers. The witness said that the failure of the police to respond in this particular case is the subject of an ongoing police inquiry.

104. The witness went on to say that his organization was in the process of investigating the deaths of about 30 people between the ages of 15 and 25, who were members of the Khutsong Students' Organization (now affiliated to ANC). Many of the deaths were alleged to have occurred in detention, and involved members of the Welverdiend riot squad. In this case also, the South African authorities have appointed an investigator, Major-General Ronnie Van der Westerhuyzen.

105. The witness then proceeded to describe how, on two occasions, a member of his organization involved in taking witnesses to the police station to make statements was photographed, together with the witnesses, and had the registration number of his car taken. The witness further described the way in which 15 policemen stormed into a house he was visiting - tactics, he said, used against him because of his involvement in assisting investigations into the deaths mentioned above.

106. The witness also described in detail an incident which had taken place in Bekkersdal (West Rand) on 5 May 1991 during an Inkatha rally, where he had been present. He saw a huge crowd of 4,000 to 5,000 armed Inkatha supporters leaving the township, one of whom, as he passed the witness in front of the squatter camp, started shooting indiscriminately. The route was lined on one side by police and on the other by SADF personnel; no action was taken by the security forces. The residents of the squatter camp started throwing stones and the Inkatha supporters retaliated. The police then opened fire on the squatter camp. A young girl was killed instantly and four other persons injured. The witness ran to the squatter camp, where he came across a boy aged about 13 or 14 years who had been shot in the head, and carried him to his car. When he asked the police for help, they simply laughed. He said the injured boy had died later in hospital. After leaving the hospital, through a side entrance because the main entrance was blocked by Inkatha buses, the witness returned to the township - with difficulty, as the route he had used before was congested with police apparently escorting the Inkatha supporters back into the township. He saw some shacks in the squatter camp being set alight. At the main entrance to the township, he witnessed a taxi-driver being shot dead. According to the testimony given by the witness, the police simply stood by and did nothing.

107. In conclusion, the witness said that, in his opinion, although the hostel-dwellers and the squatters perceive the conflict in ethnic terms, in reality it is not so. An outside force is manipulating those in question and instigating violence. He referred to the ongoing revelations in the press of secret funding by the State of the Inkatha Freedom Party.

108. The Independent of 4 August 1991 reported the arrest of a white policeman, Captain B.V. Mitchell, following testimony on 2 August from two black former policemen in a Pietermaritzburg court that he ordered them to kill people at a funeral vigil in Natal in 1988.

109. In this connection, The Independent of 9 September 1991 reported that 6 policemen would stand trial for the massacre in 1988 of 11 men, women and children in the Natal village of Trust Feed. At the time, police had blamed an unknown number of blacks, implying that the killings had been part of a political feud. Former policemen David Ndwalani and Dumasiani Khambule were reported to have admitted participating in the attack, which had allegedly been ordered by two white policemen, Captain Mitchell and Lieutenant Jakobus van den Heever, who were reported to have denied the charges. Messrs. Ndwalani and Khambule claimed that they were transferred to the KwaZulu police "to get them out of the way".

110. Further to the same incident, The Independent of 21 October 1991 reported on the trial of three white and four black police officers at the Natal Supreme Court, Pietermaritzburg, which began on 15 October, charged with the Trust Feed killings on 3 December 1988. The black "special constables" reportedly admitted taking part in the attack but pleaded not guilty on the grounds that they had acted under orders from Captain Mitchell, then station commander at the adjacent white town of New Hanover. The other two white officers, van den Heever and Sergeant Neville Rose, who were attached to the Pietermaritzburg riot police unit, were accused of being actively associated with the "attack".

111. The Independent of 9 September 1991 reported the testimony of a police informer, Mr. Sipho Madlala, alleging that security police had hired killers in February 1991 to kill an ANC supporter, Chief Mhlabunzima Maphumulo. Mr. Madlala alleged having been taken to a police station and introduced to three other men by Warrant Officer Wolfgang Warber who, together with a Detective Sergeant Grobler, supplied them with overalls, guns and R 5,000 to kill Chief Maphumulo. Mr. Madlala also claimed to have knowledge of other incidents involving members of the security forces.

112. It was reported in The Times of 19 September 1991 that 24 policemen had been suspended as a result of investigations into political violence, including killings on trains and the assassination of ANC leaders. The head of a police investigation unit, Major-General Ronnie Van der Westhuyzen, was reported as informing Business Day journalists on 18 September that the men could face charges ranging from assault to murder. He added that progress in the investigation of 22 cases had been made with the help of ANC and human rights lawyers.

113. An article in The Independent of 7 October 1991 reported that more people had been assassinated since the unbanning of ANC than during the previous 10 years. Between 1980 and 1990, about 40 activists were killed by "hit squads" inside South Africa. According to the Human Rights Commission of South Africa, more than 60 were assassinated in the previous 18 months.

114. According to articles in The Times, The Independent and The Guardian of 9 October 1991, 18 persons were murdered on 7 October as gunmen in three unmarked saloon cars and a minibus made a coordinated attack on a crowd of about 12,000 ANC mourners marching between Thokoza and Kathlehong. The Guardian quoted ANC as saying police had stood by and allowed the massacre to take place without any attempt at apprehending the gunmen. The Independent reported that eyewitnesses to the massacre had provided circumstantial

evidence of security force involvement in the killings. It further reported that chief investigator Major-General Ronnie Van der Westhuyzen had been removed from the case the previous week at the request of the attorney-general of Natal. Major-General Van der Westerhuyzen was reported to have denied having been taken off the investigation because he had been covering up evidence of police involvement in the massacre.

115. According to a report in The Independent of 14 October 1991, South African police admitted on 13 October that 2 police officers had taken part in the Thokoza massacre of 18 ANC supporters on 7 October which triggered off unrest that cost over 46 more lives. However, it reportedly denied playing a role in the killings. The article quoted the Sunday Star as saying that a man wounded in the machine-gun attack had identified a black policeman as the man who shot him.

116. It was reported in The Independent of 24 October 1991 that, during an inquest on 23 October in the Natal Supreme Court into the assassination on 25 February of Chief Mhlabunzima Maphumulo, Lucky James Mntambo (22), who had joined the Security Branch in 1988, testified that he had been involved in two earlier attempts on the victim's life. He further claimed to have been one of the five security policemen who, on 14 August 1991, gunned down the victim's driver, Mr. Jabulani Hudla, who was to have been a key witness at the inquest. Mr. Mntambo was reported to have named a Captain Pieterse as the head of the hit squad and a Warrant Officer Warber as the second in command. He allegedly reported the existence of a "hit list" at Security Branch headquarters containing the names of ANC officials.

117. The Independent of 25 October 1991 reported that, on the following day of the same inquest, Mr. Mntambo had to be restrained by the judge from providing details of a number of other "hit-squad" murders of ANC supporters in which he claimed to have participated. During an adjournment, he was reported to have told The Independent journalist that he had taken part in about 15 killings of ANC people since joining the Security Branch in 1988. Mr. Mntambo further alleged that on 24 September 1991, police gunmen had made an attempt on his life.

118. According to information received from Amnesty International dated 25 October 1991, Frans Mahuma, Thomas Mavundle, Thomas Monene and Elliot Rampau, who had laid charges of torture and assault against two police officers, namely Lieutenant Viljoen and Constable Ephraim "Fente" Rampete (see para. 85), continued to be harassed by the police. It was reported that when Mr. Mvundle went to Carletonville police station on 19 September in response to Lieutenant Viljoen's request, he was arrested. Despite efforts by Mr. Mvundle's lawyer and Ms. Sallie Sealey of the Independent Board of Inquiry into Informal Repression (IBIIR) as well as, allegedly, orders from more senior police officers, the Carletonville police did not produce him in court on 20 September. It was further reported that only after strenuous efforts by Ms. Sealey and Mr. Dan Ndzeku, of the local branch of ANC, who were concerned for his safety, was he brought to court on 23 September and later released on bail. According to the same report, Thomas Monene, together with his mother and Mr. Mvundle, was charged in court on 23 September with illegal possession of arms and ammunition. Eyewitnesses claimed to have seen the

police deliberately placing evidence in their homes. It was alleged that the police officers against whom the original charges of assault had been laid had offered to withdraw the criminal charges against the three if the accused withdrew their charges against the police.

119. Further to the above case, according to written information received from Amnesty International, there is cause for concern for Ms. Sealey and Mr. Ndzeku, both of whom have been active in assisting the ongoing "Special Task Force" police inquiry into allegations of police involvement in torture and extrajudicial executions at Welverdiend and Khutsong police stations. On 24 September 1991, Ms. Sealey and Mr. Ndzeku were arrested and charged with assault and intimidation. They reportedly denied the charges. It was reported that they were due to stand trial on 29 October but their case was adjourned until 23 January 1992. The charges, it was claimed, arose from a confrontation between them and Constable Rampete, who apparently intended to keep Mr. Mvundle hidden in the court cells and so prevent him from appearing in court. Constable Rampete has reportedly been linked to allegations of torture and extrajudicial executions during the past two years in Welverdiend and Khutsong. It was also reported by Amnesty International that on 28 October 1991, an inquest found him to be criminally liable for the death of Bongi Nyongkong, whom he admitted shooting in February 1990.

120. According to information received from Amnesty International, human rights activists as well as victims of unlawful police conduct suffer intimidation when they attempt to cooperate with official investigations into police abuses.

121. In this connection, The Independent of 20 November 1991 reported that Mr. Richard Goldstone, an appeal court judge reputedly considered by all sides as just and impartial, had been named by President De Klerk in October to head the Commission of Inquiry into the Prevention of Public Violence and Intimidation, a body established by Act of Parliament in July, with a brief to sit permanently for three years and make recommendations to the State President. Four other individuals were reportedly appointed to work alongside him. As a first step, Justice Goldstone was reported to have appointed a subcommittee to investigate the violence in Thokoza, chaired by a black barrister and fellow commissioner, Mr. Solly Sithole. It was reported that Mr. Sithole was empowered by Act of Parliament to subpoena any individual to testify, to enter any premises and to seize any documents. Mr. Sithole was quoted as describing his function as "a fact-finding mission in the spirit of the National Peace Accord" (see also paras. 132-143). It was reported that the subcommittee would hear testimony over an anticipated three-week period from more than 40 witnesses, who would have to testify under oath and would be granted automatic indemnity. They would reportedly be cross-examined by lawyers representing the Thokoza Civic Association, ANC, Inkatha, the police, and Mr. Sithole and his two assistants.

122. The Guardian of 30 October 1991 reported at length on the case of Mr. Solomon Nhleko (30), a grass-roots ANC activist, who was seriously injured after being attacked for the second time, allegedly by a local gang with Inkatha links known as the AmaSinyora. The first attempt on his life was reportedly made on 12 May 1991. The most recent attempt on Mr. Nhleko's

life had reportedly occurred on 20 October 1991 at the same location, when he ran into the AmaSinyora who immediately opened fire on him, hitting him in the leg and chest, puncturing one lung.

123. A report from Amnesty International dated 11 November 1991 on the same case expressed concern for the life of Mr. Nhleko, in particular because a person allegedly involved in the 20 October attack had been seen in the vicinity of the hospital where Mr. Nhleko was still recovering from his injuries. In addition, it was stated that although the police were in possession of a list of eyewitnesses and the names of the alleged attackers, they did not appear to have conducted any investigations into the incident. It was reported that, of the 150 serious charges, including that of murder, that had been lodged over the past 4 years with the police by KwaMashu residents against the AmaSinyora, only 15 involving the killing of KwaZulu policemen had come to trial. According to human rights monitors, the AmaSinyora had been linked to the murder of at least 40 ANC supporters.

124. In the same document, Amnesty International reported that, according to eyewitnesses, Mr. Nhleko's brother, Buti (22), had been abducted from KwaMashu on or about 9 September 1991 together with Boy Dube (36), Siyabonga Mthembu (28) and another ANC activist. They were apparently lured into an ambush and shot by KwaZulu police. On 13 September the bodies of Buti Nhleko and Boy Dube were reportedly found in KwaMbonambi, on the north coast of Natal. Mr. Mthembu was reported to have died of his injuries in hospital, while the fourth victim allegedly survived and was in hiding for fear of his life.

125. According to information received on 10 November 1991 from HRCSA, Mr. David Sikhonde and Mr. Mazo were killed on 5 November when Inkatha supporters from Folweni Reserve, Natal, attacked a march held to protest the value added tax. Residents reportedly claimed that KwaZulu police had taken part in the attack and fired on them as they fled. It was further reported that on 10 November, 8 persons were killed and a number injured in an attack in the same area by some 50 Inkatha supporters which lasted about 2 hours. It was again claimed that KwaZulu police had opened fire on residents as they fled.

126. In a document dated 8 November 1991, Amnesty International expressed concern for the safety of a former political prisoner and ANC member, Mr. Chechela Machitje, who had reportedly been under surveillance from 18 September until he went into hiding in mid-October, by a group of civilians and police, allegedly including an officer who had been involved in arresting and questioning him before his trial in 1990. A false address had reportedly been given for the renter of the car used by the men, which had allegedly been seen regularly outside Mr. Machitje's home in Thokoza and the home of a close friend, as well as cruising around the township. One occupant of the car was reported to have introduced other occupants as former members of the ANC armed wing from Venda, and claimed that they had been instructed by ANC to form defence units in Thokoza. It was reported that residents regarded their activities and claims with alarm in view of the killings which had taken place there on 8 September and 7 October 1991, and the fact that at least two of the gunmen involved in the second massacre had reportedly been identified as members of the police force.

G. The National Peace Accord of 14 September 1991

127. According to information received from the South African authorities, the following parties were signatories to the National Peace Accord: the Government of the Republic of South Africa, South African Communist Party, KwaZulu government, Congress of South African Trade Unions (COSATU), Inkatha Freedom Party, African National Congress (ANC), United Workers' Union of South Africa (UWUSA), Solidarity Party, QwaQwa government, National Peoples' Party of South Africa, National Forum, Merit Peoples Party, Lebowa government, Labour Party of South Africa, Kwandebele government, Kangwane government, Gazankulu government, Federation of Independent Trade Unions, Democratic Party, Contralesa, Confederation of Metal and Building Unions (CMBU), and the Amalgamated Union of Building Trade Workers of South Africa.

128. The Peace Accord was signed in order to combat the political violence currently prevailing in South Africa and to set up mechanisms to eradicate intimidation and violence. The principles laid down to ensure democratic political activity were based on the responsibility to uphold fundamental rights, as enumerated. In addition, a code of conduct for political parties and organizations was agreed upon. This includes assistance by them to the police in the investigation of violence and apprehending of individuals involved. In this respect, they have special responsibility not to protect or harbour their members and supporters to prevent them from being subjected to the process of justice.

129. Under the Peace Accord, particular attention is paid to the conduct of the security forces. It stresses the importance of protecting the people of South Africa from all criminal acts in a rigorously non-partisan manner. The concept of their accountability to society in the course of their duties and their obligation to cooperate with the public through conduct which would secure and retain the respect and approval of all was laid down in detail.

130. The Peace Accord further provides for the creation of a Police Board composed of members of the public and representatives of the police, in equal numbers. The function of the Police Board would be to consider and recommend to the Minister of Law and Order policy relating to the efficient functioning of the police with a view to reconciling the interests of the community with those of the police.

131. Chapter 4 of the Peace Accord sets out in detail a code of conduct by which all members of the South African police force are required to abide. It also includes an oath to be taken by each police officer and addresses the question of socio-economic reconstruction and development, and enumerates measures to be adopted in this regard.

132. Under chapter 6, it is agreed to establish a permanent Commission of Inquiry to look into the question of the prevention of public violence and intimidation.

133. Referring to post-mortem examinations presided over by judges under the Inquests Amendment Act, 1990 (Act 45 of 1990) and the Inquests Act of 1991 (Act 8 of 1991), the Peace Accord states that violence and intimidation

decline when they are investigated and their background and reasons exposed to media attention. Further, it was agreed that the Commission established by the Prevention of Public Violence and Intimidation Act of 1991 should be used as an instrument to investigate the background and reasons for violence, thereby reducing the incidence of violence and intimidation.

134. In order to improve the efficacity of the Act, any amendments deemed necessary were to be forwarded by the National Peace Committee to the Ministry of Justice. The National Peace Committee is responsible for the ultimate implementation of the Peace Accord.

135. In furtherance of the objectives to be achieved, the Commission will be composed of a chairperson, to be either a judge or retired judge of the Supreme Court, or a senior advocate with at least 10 years' experience in the enforcement of law, together with a senior advocate, attorney or professor of law as vice-chairperson. In addition, three other duly qualified persons would be appointed. The functions of the Commission will include investigation of the causes of violence and intimidation, recommendation of measures capable of containing and preventing violence and intimidation, and research programmes for the establishment of scientific, empirical data on violence.

136. Access to the Commission would be available to everyone, including persons in detention. The Peace Accord provides that, except in certain limited cases, the proceedings of the Commission shall be conducted in public and its reports submitted to the State President, who is requested (without derogation from his discretionary powers) to make such reports available to, inter alia, the National Peace Committee. In order to ensure that steps are taken against the perpetrators of violence and intimidation, the Commission may refer any evidence constituting an offence to the relevant Attorney-General and to the Special Criminal Courts to be set up under chapter 10 specifically for this purpose.

137. Finally, the Peace Accord deals with the interpretation of its provisions through a National Peace Secretariat, which would function under Regional and Local Dispute Resolution Committees and Justices of the Peace who would be appointed to promote the peace process at grass-roots level and to assist the Local Disputes Resolution Committees in their activities.

138. The Ad Hoc Working Group will continue to monitor the developments and the implementation of the Peace Accord and report as appropriate to the Commission on Human Rights.

H. Administration of justice

139. The Independent of 4 October 1991 reported that Frank Mokwati (16), who had been attacked and almost burned to death by a white farmer (see para. 58), was convicted of stealing a television set by a North Transvaal magistrate on the basis of police evidence that his fingerprints had been found at the site of the robbery, even though the television set had not been found and the boy pleaded not guilty. A plea for mitigating circumstances with regard to his previous ordeal was refused, and the length of his sentence was reported to

have been left to the discretion of the juvenile prison authorities which, allegedly, could be until he reached the age of 21. Lawyers for Human Rights reportedly drew attention to the disproportionate nature of the sentence when compared to that applied to the white farmer who had attempted to murder Mokwati, who had been found guilty but was allowed to go free after paying a fine of R 5,000 and promising to pay R 40,000 damages.

I. Conclusions

140. The Working Group reported to the Commission on Human Rights the development as to the right to life in regard to death sentences (E/CN.4/1991/10, paras. 126 to 132). In spite of the developments referred to in paragraph 27 of the report, the Group notes that the Criminal Law (Amendment) Act No. 107 (1990) is not applicable in the bantustans. Consequently, death sentences in bantustans are still mandatory.

141. The Working Group noted with great concern that violations of the right to life are still being perpetrated by the security forces. According to information received during the course of hearings in London in July 1991, at least three deaths in detention have been reported since February 1991, and several persons have been assassinated by "hit squads" and other vigilante groups without adequate intervention being made on the part of law enforcement authorities. It has been reported by the Human Rights Commission of South Africa (HRCSA) that, during the period June 1990 to June 1991, 34 persons died and 42 were injured at the hands of "hit squads".

142. The most blatant expression of the lack of respect for life has emerged from the worsening situation as regards the violence which initially started in Natal and later spread to Transvaal, as confirmed by an in-depth inquiry into the situation in Natal by an investigation committee from the International Commission of Jurists. In its last report to the Commission on Human Rights (E/CN.4/1991/10), the Working Group mentioned the possibility of complicity on the part of security forces in fomenting violence. Recent reports concerning the admission by Ministers of the Government of South Africa of the fact that R 250,000 had secretly been given to the Inkatha Freedom Party and was reportedly used to discredit legitimate political parties with whom the Government was actually in the process of negotiating a peaceful settlement, together with reports of the possible employment of Namibian mercenaries in the killings of passengers on a train in September 1990, raise questions of a most serious nature. The right to life is endangered by the activities of death squads, vigilantes and right-wing groups.

143. Death sentences are still handed down. However, it was reported to the Working Group that no executions of political prisoners had taken place over the past 18 months. Although no cases were reported to the Working Group, according to some sources, it would appear that the moratorium on death sentences has expired and in law it is now possible to impose executions. At the end of June 1991, 327 persons were said to be on death row, including 19 political prisoners. At the time of writing of the report, the situation remains unchanged.

II. APARTHEID, INCLUDING BANTUSTANIZATION AND FORCED POPULATION REMOVALS

A. Repeal of apartheid legislation

144. It was reported in The Times of 10 April 1991 that an 11-line bill repealing the 1950 Population Registration Act, which classified people by skin colour, had been tabled in Cape Town the previous day as the South African Government launched a hectic parliamentary programme to dismantle apartheid laws. The new Bill reportedly did not completely abolish population registration. It was reported to contain a "transitional provision", stipulating that anything done so far in terms of the existing Act would "remain in force as if the repeal had not taken place". It was claimed that this course of action had been taken in order to maintain the current population register for elections until a new constitution was negotiated.

145. The Independent of 3 May 1991 reported that President De Klerk had announced "drastic" changes to the law governing detention without trial, a power invested in the South African police since 1960, and had said he would appoint a standing judicial commission to investigate township violence.

146. It was reported in The Sowetan of 23 May 1991 that a bill had been tabled in Parliament on 22 May to pave the way for improved cooperation between local administrations and civic associations. The Interim Measures for Local Government Bill would legalize agreements reached between black civic associations and white town councils, and between black and white town councils. The Bill, it was reported, would also provide for the establishment of negotiating forums at local government level to discuss the creation of a single local administration or, in the case of two or more local government bodies, a joint local authority.

147. It was announced in The Times, the International Herald Tribune and The Independent of 6 June 1991 that, under the Abolition of Racially Based Land Measures Bill, the Land Acts of 1913 and 1936 had been abolished. The new measures, which would come into force on 1 July 1991, replaced laws which reserved 87 per cent of South African territory for the country's 5 million whites. However, the new law contained no specific provisions regarding the return of land seized from blacks or the repatriation of victims of discrimination. It was further reported that the Group Areas Act of 1966, which provided for and maintained segregated residential areas, had also been abolished.

148. In the same articles it was reported that the repeal contained a controversial provision protecting standards in neighbourhoods currently reserved for whites: chapter 7 of the Bill reportedly allowed 100 or more residents to draft and enforce minimum standards of maintenance and density in their suburb, district or block.

149. The Weekly Mail of 12-17 June 1991 announced that, in accordance with an act of Parliament passed the previous week repealing section 40 of the Childcare Act, which prohibited children of one race from being placed in the custody of persons of another race, white South African families could now legally adopt black children, with the proviso that due regard be given to

religion and culture. The article pointed out that this could be significant for the future of thousands of adoptable children currently living in overcrowded children's homes. However, it was alleged that implementation of the law would largely be at the discretion of social workers and the courts and dependent on racial attitudes.

150. It should be stated that many more changes remain to be effected in order to abrogate the whole body of apartheid legislation. The Group stresses that the progress made in repealing important pieces of apartheid legislation did not diminish the need for a new and truly democratic constitution, which is the paramount precondition for the safeguarding of human rights.

151. The Group is aware that a complex system such as apartheid which has created a systematic and institutionalized system of racial discrimination, cannot be abrogated by mere acts of legislation. Much more must be done at the economic, educational and political levels and in regard to administrative structures. South African society as a whole faces the enormous task of combating the racial prejudice and discriminatory atmosphere which lie at the various levels of public life.

B. Internal Security Act

152. The Times of 22 June 1991 reported that the Internal Security Act of 1982 had been amended on 21 June 1991. The reform stipulated that detention should be limited to 10 days and might be extended for similar periods only by a supreme court judge. Further, the gazetting of persons allegedly contravening security laws under the Suppression of Communism Act was abolished. However, penalties for political intimidation were reportedly increased to up to 10 years' imprisonment.

153. The Internal Security Act No. 74 of 1982 was amended in June 1991 by the Internal Security Amendment Act of 1991. At the 810th meeting, in London, representatives of Amnesty International drew the attention of the Working Group to the retention and continuing use of legislation permitting incommunicado detention without charge or trial, and referred to the Internal Security Act of 1982, in particular sections 50 and 31, and amendments to section 29.

154. According to a written comment on unlawful organizations (section 2 of the amended Act), received in October 1991 from Mr. Brian Currin, National Director of Lawyers for Human Rights of South Africa, Parliament has brought two important provisions closer to the fundamental constitutional principles of safeguarding freedom of thought and association by entirely eliminating "unlawful" publications from the Act and introducing "violence" as a test of the "unlawfulness" of an organization. Previously, the political leanings of an organization were the test of being "unlawful". However, it was pointed out that there were several procedural problems: an organization is notified of its being declared "unlawful" in the Official Gazette, rather than by the Ministry directly concerned. An officer of the organization has 30 days following publication of the notice in which to request information from the Minister on the reasons leading to the decision. Under the new provisions, there is an improvement in that the decision of the Minister is subject to review. Previously, court action had to be taken within 14 days, but the new

law provides for three months (extensible to 12 months). On the other hand, jurisdiction is denied to any court to hear an action to suspend or postpone the operation of the Minister's order. Therefore, until the order is overruled by a court of law, the organization in question is in danger of being put out of action.

155. Referring to sections 54 to 61 of the Internal Security Act, the representative of the Human Rights Commission of South Africa (HRCSA), in testimony to the Working Group at its 809th meeting, said that, in addition to terrorism and sabotage, previous legal provisions on harbouring, furthering aims of a banned organization, attending an illegal gathering and unlawful acts during a campaign against any law remain on the statute books. On the other hand, provisions relating to promoting communism, possession or distribution of a banned publication and breaking a banning order have been repealed.

Sections 13 and 14

156. The representative of HRCSA pointed out, at the 809th meeting of the Working Group, that sections 13 and 14 have been modified (see below). Promotion of communism is no longer a ground for banning organizations. However, use of threats of violence or disturbance to bring about change is still a ground for banning. The Group was informed that, under the new provisions, it was possible to question such a decision in a court of law. It was pointed out, however, that in all other respects banning powers and their consequence remain intact.

Section 29

157. Section 29, which provided for unlimited preventive detention of a person suspected of sabotage or terrorism, has now been replaced by section 13, which limits detention generally to 10 days. A commissioned officer (above the rank of Lieutenant-Colonel) is responsible for notifying a detainee's relative of his or her arrest and place of detention. It was pointed out in the document received from Lawyers for Human Rights that a relative need not be notified if the "commissioner has reason to believe that it will hamper any investigation by the police". Further, during the initial 10-day period a detainee has no automatic and general right to a legal visit. The right to consult a lawyer is strictly limited to the preparation of opposition to an application by the State extending the period of detention. A "legal representative" may be notified only when the commissioner officer files an application with the judge in chambers to extend the initial detention by 10 days. Furthermore, the officer will notify the detainee's lawyer "if he or she so requests". It was pointed out by Lawyers for Human Rights that it is not at all clear whether the officer is under an obligation to inform a detainee of his or her right to legal representation, nor is it clear whether the officer is under obligation to notify a lawyer if so requested. It was further pointed out that the failure of these provisions to ensure immediate and automatic legal representation to those detained, by placing a legal duty on the police to contact a lawyer, albeit pro deo counsel, runs counter to fundamental principles of justice. The procedure relating to extension of the 10-day period of detention also presents problems. The application which is to be made to a "judge in chambers" at least 48 hours prior to expiry of the

10-day period could lead to a detainee having only 48 hours' notice, as the law states that a detainee need only be notified of the application "(b) before the application is heard ...", thus providing a possible period of eight days to the commission whereas the detainee could have only two days' notice or even just a few hours before the application is heard.

Section 31

158. According to the document submitted by Lawyers for Human Rights, section 31, dealing with the detention of State witnesses, remains intact. The wide-ranging discretion accorded to the Minister under this section includes arrest and detention of any individual "likely to give material evidence for the State in any criminal proceedings ... which may serve as a basis for an offence", or any individual who "may be tampered with or intimidate or ... abscond, or whenever [the Minister] deems it to be in the interests of such person or of the administration of justice". The person arrested can be imprisoned until the "criminal proceedings are concluded" and no time limit for this detention is specified. This provision of the law allows an individual (however innocent of the crime involved) to be arrested and imprisoned, as a witness, for a prolonged period, as was the case in the Delmas trial. Even before the State has filed a charge sheet or an indictment, an individual can be arrested and imprisoned for as long as six months as a State witness. The individual thus detained is not entitled to visits from his family or a legal representative, apart from bi-weekly visits from a magistrate and a district surgeon, without the consent of the State. Furthermore, section 31 denies to any court jurisdiction the right to order the release of the detainee or to "pronounce upon the validity of any regulation" involving the location of the detainee, the refusal of the Minister to allow visitors or, if allowed, the conditions of such visits.

Section 46: constraints on gatherings

159. Despite the progress made with respect to the right of freedom of assembly, this section also remains intact. It accords to a magistrate power to prohibit for up to 48 hours any gathering deemed to endanger the "public peace" or, in the case of processions, to impose conditions as to the route to be taken, designate areas which may not be entered, or require participants to travel in vehicles. The same section authorizes the Minister to prohibit for an unlimited period any gathering when "he deems it necessary or expedient in the interest of security, public peace or to prevent the ... causing, encouraging or fomenting of feelings of hostility between different population groups".

Section 50: actions to combat states of unrest

160. Parliament repealed section 50 A of the Act, which authorized detention for up to 180 days. However, according to the document received from Lawyers for Human Rights, section 50 remains unaltered. Under this section, a police officer who "is of the opinion" that the actions of an individual contribute toward a state of "public disturbance, riot or public violence", and that the detention of such a person will contribute towards the termination of such disturbance, etc., may, without a warrant, arrest and detain the individual in a prison, police cell or lock-up for 48 hours. Moreover, a magistrate may

extend the initial detention period for 14 days if "a police officer", under oath and "behind closed doors", provides information indicating that further detention is warranted. There is no provision for notifying a detainee's legal representative or family.

161. It was pointed out by a representative of the Human Rights Commission of South Africa (HRCSA) at the 809th meeting of the Working Group that the piecemeal amendment of the Internal Security Act No. 74 of 1982 is not adequate. It is applied in conjunction with the relevant provisions of the Criminal Procedures Act, which has not been amended. Although sections 28 and 50 A have been repealed, the provision for detention without charge under the amended sections 29, 31 and 50 is intact. HRCSA has expressed concern in this regard since, in the past, 41 per cent of all known deaths in detention have occurred within the first six days of confinement. The HRCSA representative testifying before the Group mentioned that, according to their records, at the end of June 1991, there were 53 detentions, 3 of which were under section 29 of the Internal Security Act; the rest were in the so-called independent "homelands". The witness further stated that, although six deaths in detention had been recorded between June and October 1990, at the time of testifying no deaths in detention or in police custody had been recorded since then by his organization.

162. The same witness informed the Group that section 50 of the Internal Security Act was again being applied in January 1991, and that close to half of the total number of detentions occurred in the so-called independent "homeland" of Bophuthatswana.

Section 54: terrorism and related offences and penalties

163. The following is an illustration of the retention of laws which contain serious contraventions of fundamental freedoms. Under section 54 (1), a "terrorist" is defined as any person who, with the intent to:

> "(a) overthrow or endanger the State authority ...;
>
> "(b) achieve ... or promote any constitutional, political, industrial, social or economic aim or change ...;
>
> "(c) induce the Government ... to do or to abstain from doing any act or to adopt or abandon a particular standpoint; or
>
> "(d) put in fear or demoralize the ... public, a particular population group ... or to induce [them] to do or to abstain from doing any act ... commits an act of violence or threatens or attempts to do so; [or] performs any act ... aimed at ... such act or threat [or] conspires ... instigates ... encourages ... any other person to commit ... or perform such act ...".

164. In the document submitted by Lawyers for Human Rights, Mr. Currin referred to the wide provisions under "subversion", which allow for prison terms of up to 25 years, and cited the case of Minister of Law and Order and

Others v. Parliceric 1989 (3) SA 679, when this provision was invoked in respect of events that had occurred in the context of a labour dispute. Thus, a member of a committee that had coordinated a strike involving the South African Transport Services (SATS) over disciplinary action taken by the management against one of its employees was charged with subversion. The lower court ruled against the State. This decision of the trial court was unanimously upheld by the Appellate Division. Justice Corbett characterized as "fanciful" the State's argument that because, inter alia, the detainee had urged union members not to buy train tickets or use SAT transport services, it amounted to subversive action, i.e. it was intended to "achieve ... any constitutional ... aim or change in the Republic", as defined under section 54 (1) (b) (see above).

165. The Ad Hoc Working Group welcomes the initiative on the part of the Government of South Africa to remove discriminatory legislation. However, as can be seen from the foregoing comment, the changes in the Internal Security Act are not far-reaching enough. The Working Group considers it imperative that the above-mentioned statutes should be re-examined in the course of the parliamentary sessions of 1992, in order for further necessary changes to be made.

State of emergency

166. According to the testimony received from the representatives of the Anti-Apartheid Movement and the organization Article 19, the state of emergency was lifted in Bophuthatswana in March 1991.

167. It was reported in The Independent of 30 October 1991 that Brigadier Oupa Gqozo, military leader of the so-called independent "homeland" of Ciskei, declared a state of emergency on 28 October to curb what he termed acts of terrorism fomented by ANC. According to a report from the Human Rights Commission of South Africa (HRCSA), Proclamation No. 11 of 1991, which was issued on the following day, stipulated that the Commissioner of Police had the power to authorize, without warrant, the arrest or detention of any person "deemed a threat to the safety of the public or the maintenance of public order" and might, "after due notice, restrict any media presence in areas deemed applicable, and prohibit the distribution or sale of printed matter". Further, any member of the security forces might enter any premises or building and search any person or vehicle if he or she was "of the opinion that it is necessary for the safety of the public, or the maintenance of public order". It was reported that Brigadier Gqozo had also banned strikes and stayaways. On 10 November 1991, HRCSA indicated that applications challenging the legality of the state of emergency had been filed in Bisho Supreme Court on 6 and 7 November and would be heard on 12 November (see paras. 173-174).

168. The representative of HRCSA, in testimony to the Working Group at its 809th meeting, reported that the Public Safety Act of 1953 had been invoked on 24 August 1990, whereby a total of 36 magisterial districts,

encompassing 52 black townships, were declared "unrest areas". Of these, 15 remain under this restriction. "Unrest areas" are, in reality, mini-"states of emergency" and the corresponding regulations include:

i. Detention without trial;

ii. Curfew and other restrictions on movement;

iii. Prohibition of gatherings (for example, in May 1991, open-air gatherings in "unrest areas" were prohibited for two weeks under the Unrest Regulations).

C. Petty Apartheid

169. The Weekly Mail of 18-24 January 1991 reported that an attempt by the Springs Town Council to circumvent the repeal of the Separate Amenities Act by closing two swimming pools rather than allowing the admission of people of all races, was thwarted when it was ordered by the Supreme Court to reopen them and to pay court costs. In judgement, Mr. Justice Daniels rejected the Council's argument that the decision to close the pools was motivated by economic considerations only. The Director of the Legal Resources Centre, Mr. Mahomed Navsa, reportedly said that the judgement was of major significance, signalling that courts would see through devices to circumvent the repeal of the Act.

D. Bantustanization and forced population removals

170. It was reported in the Weekly Mail of 18-24 January 1991 that residents who had been evicted from Roosboom in Natal and Machaviestad near Potchefstroom had returned to their ancestral lands. Mr. Richard Clasey, a fieldworker of the Association for Rural Advancement (AFRA), reportedly estimated that, since 1948, 103 communities, involving a population of more than 100,000 persons, had been evicted in the Natal area alone. Ms. Aninka Claasens, a researcher at the Centre for Applied Legal Studies, was reported to have agreed with Mr. Clasey that the current situation in South Africa warranted a special land court which could adjudicate competing land claims. She alleged that such institutions established in Australia and New Zealand were operating very successfully. Mr. Star Mogwetse, a fieldworker from the Transvaal Rural Action Committee (TRAC), was reported to have claimed that at least six rural communities were likely to imitate the action taken by the people of Machaviestad.

171. The Weekly Mail of 8-14 February 1991 reported that the Tsitsikamma land from which the Mfenge community had been removed at gunpoint in 1977 might soon be on the market again, and that each of the 19 white landowners who had bought the expropriated land with 100 per cent State loans stood to make a handsome profit on the resale deal. The Tsitsikamma Exile Assocation (TEA) reported that the community had physically resisted removal to Ciskei and continued to contest its forced removal. At the time of the removal, the 4,000 Mfenge of Humansdorp reportedly received a total of R 200,000 in compensation for improvements made to their land. It was reported that, in return for the land itself, "they had foisted on them a slice of Ciskei, known as Elukhanyweni". The Secretary of TEA allegedly claimed that "the effect of

the intended repeal of the Land Acts will be that we will be granted the opportunity to lawfully buy back our birth land, which was unlawfully taken from us at gunpoint and for which we received no compensation, at some R 30 million from white farmers who bought it at R 1.3 million".

172. It was reported in an article in the Weekly Mail of 15-21 February 1991 that the three-year struggle of the Nkgonkgweni community against incorporation into Ciskei had finally won for the villagers the right to live in South Africa and to receive compensation of R 500,000 for homes which had been bulldozed in 1989 by the Ciskei government of Mr. Lennox Sebe. The South African Government was reported to have promised the residents water, sewage disposal facilities and a school, while the residents had agreed to R 40,000 of the compensation money being used to build the school and to pay the Department of Education and Training for teachers. It was further reported that, after consultations with the residents, the Ciskei "military government" under Brigadier Oupa Gqozo had formally requested Pretoria to take back Nkgonkgweni. Since October 1990, the South African Government was reported to have commenced paying pensions to Nkgonkgweni residents. In sharp contrast to the previous state of affairs, when police would routinely enter Nkgonkgweni and beat up the villagers, there were no longer any policemen from South Africa or the so-called "homeland" of Ciskei in the village.

173. On 1 March 1991, The Independent reported that an agreement had been reached on 27 February between the military leader of the so-called "homeland" of Ciskei, Brigadier Oupa Gqozo, and Mr. Pik Botha, Minister for Foreign Affairs, under which South Africa assumed financial, constitutional and judicial control of the territory. Brigadier Gqozo allegedly called it "the first step to reincorporation into a new, non-racial South Africa". The agreement was reported to allow South Africa to select the Ministers of Finance, Transport and Public Works, Agriculture, and Justice, and provided for an increased grant for the maintenance of law and order. It was reported that South Africa was already providing more than 80 per cent of the Ciskei budget and that the South African army had been installed there. Brigadier Gqozo was reported to have issued a decree amending the constitution to allow sovereignty to be relinquished.

174. As a follow-up to the above, The Star of 20 March 1991 reported Mr. Botha as stating that no formal request from Ciskei for the territory to be reincorporated into South Africa had been received. He was reported to have claimed, however, that Ciskei, Transkei and Venda had expressed such a wish in general terms. The South African Government had reportedly sent troops into Ciskei and appointed senior officials there, in a serious effort to help the territory promote sounder administration and to ensure stability.

175. An article in The Independent of 8 March 1991 reported that Mr. Enos Mabuza, Chief Minister of Kangwane, had announced his resignation the day before. He thus became the first of the 10 leaders of the so-called "homelands" to do so voluntarily. Kangwane was reported to be the most stable and peaceful of all the so-called "homelands", as not a single death had been reported after Mr. Mabuza had taken office. It was claimed that Kangwane had received no financial aid because Mr. Mabuza had publicly expressed his opposition to the "homeland" system.

176. The Sowetan of 15 July 1991 reported that about 6,000 residents of Braklaagte, 20 kilometres east of the Western Transvaal town of Zeerust, who had been driven from their village in January by Bophuthatswana vigilantes, returned home peacefully on 13 July. The attacks, during which their livestock had been stolen and their homes looted and set on fire, had followed the villagers' demand that the area be reincorporated into South Africa following its forced incorporation in 1988. The conditions for their return, arranged between the South African and Bophuthatswana authorities, included guarantees against further harassment and the reopening of schools closed in June 1989.

177. It was reported in the International Herald Tribune of 2-3 November 1991 and The Independent of 10 December 1991 that, under a government Gazette notice of 31 October, 1 million hectares (2.5 million acres) of land from Transvall and Cape Province had been incorporated into the so-called "homeland" of Bophuthatswana. In the face of mounting criticism, the Minister for Land Affairs, Mr. Jacob de Villiers, was reported to have said that the transfer was in line with decisions made by the central Government as long ago as 1975 and did not represent a new policy towards the so-called "homelands". In addition, it was alleged that the Government of Bophuthatswana had already been utilizing the majority of the land in question for some time.

178. The bantustans constitute a basic subsystem of apartheid. Their appearance derives from the structuring of apartheid in such a way that their total elimination is a key component of the current process of the dismantling of the whole system. The reincorporation of each bantustan into the South African State is the sole responsibility of the central Government, and could be accomplished through a purely administrative process.

III. RIGHT TO EDUCATION, RIGHT TO HEALTH, FREEDOM OF EXPRESSION AND FREEDOM OF MOVEMENT

A. Right to education

179. Although many apartheid laws have been repealed, the overwhelming majority of schools still remain segregated by law and there is no single integrated system which could be developed under a single integrated Ministry of Education.

180. According to The Star of 9 January 1991, the process of opening schools to all races began in early January 1991. Of the 2,000 white provincial schools in the country, 205 became non-racial. It was reported that under the new system, parents decide whether or not schools should become non-racial. The National Education Co-ordination Committee (NECC) was reported to have charged that the opening of about 10 per cent of the total number of provincial schools would have little effect, since it did not form part of national policy. Dr. Chris Pretorius, of the Department of Education and Culture, said that 33 provincial schools in the Transvaal had opted to open their doors, 1 in Orange Free State, 107 in the Cape and 64 in Natal.

181. An article in the International Herald Tribune of 10 January 1991 quoted a government report to the effect that black students had failed a recent round of high school graduation examinations at the highest rate in the history of the country. Only 36 per cent of the 233,000 black students who took the tests in late 1990 passed, compared with 42 per cent the previous year. The pass rate for whites was 97 per cent, for Asians 95 per cent and for coloureds 79 per cent. The Department of Education and Training blamed the disastrous results on the failure of parents and political leaders to persuade a "lost generation" of militant black youngsters to return to school after several years of political activism. It also claimed that school strikes had wasted nearly 20 per cent of the academic year.

182. It was reported in The Guardian of 10 January 1991 that more than 90 per cent of white schools elected for the segregated status quo. Under a policy introduced in 1990, white schools could stay as they were or they could opt for one of three models whereby they could determine their own admissions policy. It was further reported that, under a complicated formula, a school could only allow blacks if the majority of parents voted for a change: in a poll with 100 per cent of the parents participating, 72 per cent had to agree; in a poll with 80 per cent participation, 90 per cent had to vote for the change.

183. The article further reported that over 30 of the Transvaal's 950 white schools became open to blacks as of 9 January 1991. A further 171 schools in South Africa were expected to follow suit. More than 30 black children were admitted to Saxonwold Primary School in Johannesburg's affluent northern suburb, some of them travelling from Soweto, 12 miles away.

184. The Star of 16 January 1991 reported that although 1,048 black, Indian and coloured pupils had been accepted at 34 open government schools in the Transvaal, it was probable that several thousands had been refused. A spokesman for the Transvaal Education Department was reported to have said

that 269 black students had been enrolled at high schools and 779 at primary schools. However, the total of 480,000 white pupils attending the Department's over 900 schools would seem to demonstrate that the number of black and coloured admissions was "a mere drop in the ocean". Two girls' high schools reported turning black applicants away "by the hundred".

185. An article in the Weekly Mail of 5-11 April 1991 reported that expenditure on education in the budget for 1991/92 showed no real increase and would not significantly lessen the gap between white and black education. Indeed, some educationalists reportedly contended that when inflation and population growth were taken into account, expenditure was even less than for the previous year. In particular, the gap in per capita spending on black and white pupils had not decreased. NECC spokesman Mr. Mel Holland said that the 6 per cent annual growth in black school enrolment meant that the ratio of expenditure on white and black pupils would rise from 3.5 to 1 to 4.5 to 1. "There is no provision for backlogs", he said, "no provision for textbooks and [the budget] does not address the teacher-pupil ratio. There is also no programme embarking on long-term equalization."

186. The Weekly Mail of 24-29 May 1991 reported that "own affairs" education was crumbling of its own accord in schools designated Indian and coloured, particularly in the Cape and Transvaal. House of Delegates Education Minister Dr. Kristen Rajoo announced in Parliament that there were 10,686 African, 4,880 coloured and 29 white pupils, and 1 African, 16 coloured and 108 white teachers in Indian schools. In Lenasia, more than 750 pupils from surrounding squatter camps and townships had been accepted at the 16 primary and 6 high schools. However, it was reported that an "own affairs" ethos was embedded in the tricameral Constitution. Lenasia Education Forum spokesman Mr. Ismail Vadi expressed the opinion that, "We need a single education department; non-racialism needs to incorporate administration and teaching, as well as pupils".

187. The Independent of 5 June 1991 quoted Mr. Johan Garbers, Director-General of National Education, as saying, "If parents want autogenous education that must be possible. It could be whites-only." Presenting a government proposal to change apartheid education, he said the State would continue to pay for racially exclusive schools. Other proposals included seven years of free and compulsory education for blacks. Schooling was not compulsory for blacks, but if they attended school they had to contribute to the costs.

188. An article in the Weekly Mail of 5-11 July 1991 reported that thousands of black students would face a bleak future as foreign funding moved from "victims of apartheid" to a "development" orientation. The Kagiso Trust, the Bursary Council of South Africa (BCSA) and the Education Aid Programme (EAP) reportedly feared that foreign funding would soon fall to a trickle and that, in as little as five years' time, they would have to rely entirely on South African funding. A tendency was reported to be growing for students to be offered loans rather than grants.

National Education Co-ordinating Conference (NECC) occupation campaign

189. The Weekly Mail of 28 June to 4 July 1991 reported that a massive campaign was being planned for the Pretoria-Witwatersrand-Vereeniging area to appropriate closed or underutilized white schools. It reported that there had been an 87 per cent increase in surplus places at white schools from 1986 to the first quarter of 1991 and that 146 white schools had been closed between 1986 and 1990, 52 of them in 1990. Meanwhile, the Government had been attempting to slow down or avert the takeover of empty schools in so-called "grey" inner-city areas by offering them to private institutions, thus obliging black students to pay for their education.

190. The same report cited the case of Orange Grove Primary School, Alexandra, which had been closed since the beginning of the year. Days before it was due to be occupied by pupils from the reportedly dilapidated and insanitary Old Ikage Primary School, the Minister of Housing, Welfare and Works announced that it would be sold to the Jewish Board of Education. However, the Jewish community allegedly refused the offer, in order to allow NECC to negotiate with the Government. The article also cited the case of Joubert Park Laer School, which was rented to a private school while "official" schooling remained out of reach of more than 20,000 predominantly black students in the Hillbrow/Joubert Park area.

191. The Weekly Mail of 5-11 July 1991 reported that while the tendency to allocate empty schools to private institutions was continuing, NECC's campaign to occupy them was gathering momentum nationally. At a meeting on 10 July, NECC and other organizations decided that once the earmarked schools were occupied they would be handed over to the Department of Education and Training, which would be held responsible for providing maintenance and materials. This was reported to be another source of conflict, since most of the empty schools had been stripped of educational facilities.

192. It was reported in the Weekly Mail of 26 July to 1 August 1991 that while NECC and the Democratic Party had reached agreement over the transformation of Orange Grove School into an open public primary school, the NECC campaign would continue with the occupation of more than 200 schools in the first two weeks of August. NECC General Secretary Ihron Rensburg was reported as saying that a meeting with Minister of Education Stoffel van der Merwe had failed to produce results, but that education authorities still had time to "prevent embarrassment" by reopening disused schools. It was further reported that the principals of some schools were already beginning to come forward with offers to accommodate black pupils.

193. Articles in The Times and The Guardian of 22 August 1991 reported Minister of Housing and Works Sam de Beer, who was due to take over the black education portfolio in September, as saying that he had given orders to officials of his new department to streamline immediately the procedure by which empty schools came under its authority. On 21 August, it was reported that Mr. de Beer had visited three schools under threat of occupation in the framework of the NECC campaign.

194. The Working Group is aware of the many difficulties created by the racially based and complex system set up under apartheid, which provided for separate educational facilities and discriminatory financing. Despite the effort being made to extend and increase financial assistance to black schools, the system of education still remains segregated and schools are being opened to non-whites only if the vast majority of parents in each school agree. It has been reported to the Working Group that State schools which do not choose to allow admission on a non-racial basis continue to receive a State subvention. The Working Group would view this state of affairs as contrary to civilized standards.

195. The Working Group is particularly worried about the future of the black youth (the so-called "lost generation") which had no opportunity to obtain a proper education at the time, and expects the Government to make the utmost efforts to compensation for the lost years of schooling.

B. Right to health

196. It was reported in The Star of 9 January 1991 that in spite of the abolition of the Separate Amenities Act in October 1990, the racial segregation of patients at Witbank Hospital in the Transvaal was continuing. Dr. Atul Patel reportedly alleged that on 8 December 1990, 40 patients occupied the 8-bed black maternity ward, while 5 beds remained unoccupied in the white maternity ward. He said that all patients were charged R 170 per day, but white patients were often placed in private rooms with every available facility and convenience. He was further reported to have said that black patients were treated in a primitive dormitory-type ward, with beds placed so close together that nursing staff had to struggle to attend to patients. It was further reported that the wards for black male patients had 2 baths for 55 beds and the women's ward only 1 toilet for 40 beds.

197. The same article reported claims by Dr. Patel that he had repeatedly been refused permission to work in white wards, although it was the stated policy of the Transvaal Hospital Administrative Board that a doctor of any race might treat a patient of any race, if the patient agreed.

198. In The Star of 20 March 1991, a journalist reported on differential treatment in the Transvaal Provincial Administration Hospital at Witbank, where black patients recovering from surgery in a crowded women's ward were being showered with debris by a workman noisily chiselling into a wall, while many beds lay empty in the adjacent white section. Other signs of racism at the hospital were reported to be a "Europeans only" sign on a lift; a black person refused entry to the main casualty block being told, "Your casualty is around the back", and black patients having to bathe in cold water.

199. The same newspaper contained a report on a tour of the Welkom Provincial Hospital by representatives of ANC, the Democratic Party, the Medical Association of South Africa (MASA) and other anti-apartheid groups. They had allegedly found stark examples of differentiation of treatment between black and white patients, including a prominent "blacks wards" sign displayed at the entrance of the hospital, a badly burned baby left waiting for more than five hours for admission, a toddler's drip resting on a fire extinguisher, up to three babies in a cot, 10 beds pushed together in a men's ward, and some

patients in the women's surgical ward two to a bed. Only metres away, it was reported that white patients were treated in well-equipped wards with many beds empty. When asked why patients in the black section, with 125 per cent occupancy, could not be admitted to the white section, with 85 per cent occupancy, it was said that certain wards were reserved for specialists. The article went on to quote Mr. Roelf Dreyer of Free State Hospital, who allegedly claimed that blacks preferred segregated medical facilities and that "unsophisticated" patients could not be permitted to be treated among "sophisticated" ones.

200. The Weekly Mail of 14-20 June 1991 carried a report on apartheid practices at the State-run Sterkfontein Hospital for the mentally ill, near Krugersdorp. It claimed, inter alia, that black patients had to wait naked to be showered in groups while white patients showered comfortably in single cubicles. When black dormitories were full, patients reportedly had to sleep in ice-cold concrete "side rooms" intended for isolation. The white section, in the front of the building, had various facilities and well-kept wards for about 500 patients while the unheated black wards, at the back, housed 700 patients. Despite announcements by Health Minister Rina Venter that segregation in hospitals would be abolished, Sterkfontein reportedly had only three "mixed" wards. According to a health worker, those blacks admitted to the white rehabilitation ward must "have matric" (a school-leaving certificate), speak English and be able to "adapt well to the environment", requirements which apparently did not apply to white patients. The "black" dining hall was reportedly a shed with no doors and food was carried from a distant "black" kitchen. Black staff members, with the backing of the National Education, Health and Allied Workers' Union (NEHAWU), were reported to be negotiating with management about the discriminatory conditions and complaining, inter alia, of understaffing and overcrowding in black wards, where 8 nurses might have to care for 80-100 patients as against 40 in white wards, and the lack of social workers or psychologists to provide therapy in black wards. NEHAWU was allegedly not recognized by Sterkfontein's management, which apparently refused to acknowledge the complaints.

201. The Weekly Mail of 28 June to 4 July 1991 reported that as a result of its exposé of maltreatment of black patients in two Lifecare psychiatric hospitals, some facilities had been improved. At Sterkfontein Hospital, signs pointing to the "black kitchen" and "female black wards" had been removed but Deputy Director Jan van Wyk reportedly admitted differences in facilities for black and white patients and allegedly acknowledged that apartheid still existed in the institution.

C. Right to freedom of expression

202. At its 809th meeting, in London, the representative of the Human Rights Commission of South Africa (HRCSA) informed the Working Group that sections 5 and 15 of the Internal Security Act had been repealed, thereby removing the legal provision permitting the closure, suspension or banning of newspapers or similar periodicals.

203. It was reported in The Guardian of 3 August 1991 that an investigation was to be launched by the South African police into the origin of the documents used by The Guardian and the Weekly Mail in their exposé of the

funding of the Inkatha Freedom Party by the Government. It was reported that under the Criminal Procedure Act police could subpoena journalists to force them to disclose the source of their information. Failure to comply could result in a jail sentence. The South African Union of Journalists was reported to have announced on 2 August that "the role of the police in the Inkathagate scandal has been amply highlighted. For the police to investigate the Weekly Mail and its sources is simply vindictive."

204. At its 811th meeting in London, the Working Group heard testimony from a representative of Article 19 that, despite the lifting of many restrictions, there remained in force a number of laws which led to the restriction of the right to freedom of expression. Among many instances cited were the following.

205. On 26 February 1991, Patrick Lawrence, a journalist for the newspaper The Star, was subpoenaed under section 205 of the Criminal Procedure Act to provide information concerning the source for an article he had written alleging that a key witness in a trial had disappeared in the company of three members of ANC. On 5 March, Mr. Lawrence was sentenced to 10 days' imprisonment for refusing to reveal his source. He was released on bail pending appeal.

206. On 5 April 1991, it was announced that the Weekly Mail would be investigated under section 27B of the Police Act (1958), which provides for a five-year jail sentence for any person guilty of publishing "untrue matter" concerning the police. The article in question reportedly concerned violence in the township of Alexandra and quoted civic leader Moses Mayekiso as alleging police participation in the conflict. In this context, it was reported that the law was under review but has not yet been amended.

207. On 27 April 1991, it was reported that the police had confiscated a tape from the Natal Witness newspaper containing a confession by Sipho Madlade, a policeman who claimed to be a member of a police intelligence unit and to have been involved in the assassination of Chief Maphumulo (see para. 72).

208. On 22 May 1991, it was reported that 17 ANC Women's League supporters had been arrested by police while demonstrating for the release of political prisoners and to highlight the plight of prisoners on hunger strike. Although it was reported to have been a peaceful demonstration, the women were charged with resisting arrest and obstructing traffic.

209. Referring to section 4 of the Declaration of Unrest Areas Act, the representative of Article 19 said that to disallow publication of certain matter before it was even put before the public amounted to an undue restriction. The witness was of the opinion that it would be preferable to have adequate laws providing for redress in cases of defamation or public disorder resulting from published materials. The witness also reported to the Working Group that individuals were still being "listed", making it illegal for them to be quoted.

210. According to written information submitted by the South African Union of Journalists (SAUJ) in November 1991, journalists and newspapers continued to face considerable difficulties in publishing material which they considered to be of public interest. Many incidents were described, the following being of particular significance.

211. It was reported that since September 1990 seven subpoenas had been issued under section 205 of the Criminal Procedures Act to force journalists to disclose information or confidential sources of information. Two of these resulted in prison terms. Other action against the media has included the detention of a media union official and a radio announcer, the searching of newspaper premises and removal of materials, and the investigation of charges under a wide variety of laws, such as the Protection of Information Act, the Police Act, the Prisons Act, the Internal Security Act, and for contempt of court.

212. It was reported that on 27 April 1991 police searched the home of newspaper editor Mr. Martin Williams, under a search warrant, in respect of the publication of a confession by a security policeman concerning involvement in the assassination of Chief Maphumulo (see para. 207). Under the terms of the warrant, the police were authorized to seal Mr. Williams' home and the premises of his newspaper until the tape-recording of the interview with the policeman was surrendered. The tape was handed over under protest.

213. On 16 June 1991, Mr. Barney Desai, the information secretary of the Pan-Africanist Congress (PAC), was forcibly removed by soldiers from the studios of Radio Ciskei during a live interview for the programme "Candy's Corner".

214. According to a report in the Weekly Mail, the minutes of a meeting of Radio Ciskei's management on 5 July 1991 disclosed that the radio station had banned any mention on the air of PAC, ANC, the Azanian Peoples' Organization (AZAPO) or any other political organization.

215. It was further reported that on 2 August 1991, police were investigating charges against the Weekly Mail under the Protection of Information Act that a secret police document leaked to the newspaper, which had led to the disclosure of government funding of the Inkatha Freedom Party, was stolen.

216. In its document, SAUJ expressed the hope that, inter alia, section 27 (b) of the Police Act and section 205 of the Criminal Procedures Act would be among the statutes which would be drastically amended in line with political changes in South Africa. Consultations with seven ministries in respect of legislation relating to the media were believed to be almost completed; however, the parliamentary session of 1991 ended without the expected amendments being tabled.

D. Right to freedom of movement

217. It was reported in the International Herald Tribune of 23-24 March 1991 that a 15-year-old ban on unauthorized political and protest meetings would be lifted when the provision, which had been renewed annually, was allowed to lapse on 31 March 1991. Under this provision, dating from 1976, it had been

necessary to obtain written permission from a magistrate before such a meeting could be held. The Minister of Justice, Mr. H.J. Coetzee, was reported to have said that permission would still be required for marches, but that it would be refused only if a magistrate found evidence of intent to challenge or undermine the law. The report stated that almost all rallies and marches held between 1976 and 1989 had been outlawed, but that President De Klerk had then begun to relax restrictions on political opposition.

218. The Guardian of 25 March 1991 reported that a clash between the police and ANC supporters in Daveytown, a black township near Johannesburg, had resulted in 11 dead and nearly 30 wounded. A police spokesman was reported to have said that the clash had taken place when about 40 policemen moved into the township to prevent an unauthorized ANC meeting.

219. According to the Weekly Mail of 5-11 July 1991, a small, peaceful demonstration outside the John Vorster police headquarters on 4 July in support of COSATU (Congress of South African Trade Unions) leaders on trial for alleged assault and kidnapping was broken up by police using unwarranted violence. After an allegedly unintelligible warning to disperse, the article reported that dogs were set on the crowd of a few dozen people, badly mauling Alvina Nkosi in front of members of the press corps. Before acceding to requests for an ambulance, the police insisted that Ms. Nkosi should first be charged. Earlier, police reportedly twice closed in on a large crowd gathered at the magistrate's court, and 61 COSATU members were arrested.

220. At its 809th meeting, the representative of the Human Rights Commission of South Africa (HRCSA), referring to sections 46 to 53 of the Internal Security Act, informed the Working Group that during the month of May 1991 2,500 persons had been arrested for attending gatherings which had been declared illegal.

221. According to information received from HRCSA, members of the Black Sash and its service organization, Transvaal Rural Action Committee (TRAC), staged a peaceful picket and placard demonstration on 5 October 1991 in Mmabatho, Bophuthatswana, following a lack of response from the so-called "homeland" authorities to their letter of August 1991 inquiring whether the organization was still banned under the banning orders issued in July 1989. Despite roadblocks set up to prevent the demonstration, 11 members of Black Sash succeeded in reaching their destination, watched by several journalists and observers. Reportedly, within 15 minutes the demonstrators, together with the journalists and observers, were rounded up and escorted to Mmabatho police station. The journalists were released soon afterwards but 16 persons were detained, i.e. the 11 members of Black Sash, the Chairperson of Mafikeng Anti-Repression Forum (MAREF), 2 observers from Germany and 2 from the United States of America. MAREF subsequently commented that these events were not in line with the changes taking place in the rest of the country under the provisions of the Pretoria Minute.

222. On the same subject, information dated 11 October 1991 from Amnesty International announced the release of all 16 persons, following a hearing on 7 and 8 October in Mmabatho magistrate's court at which all charges against the four foreign nationals were withdrawn and they were released unconditionally. The 11 Black Sash protestors reportedly pleaded guilty

to one charge each of attending an illegal gathering in terms of the Bophuthatswana Internal Security Act, while other charges against them were dropped. They were convicted and sentenced to a fine of R 400 or eight months' imprisonment (half the sentence suspended for three years). At the conclusion, they were reported to have paid a fine of R 200 each before being released on 8 October. Amnesty International expressed concern that the provisions of the Bophuthatswana Internal Security Act effectively prohibited persons from organizing or attending peaceful meetings of a political nature and permitted the repeated detention of political activists, human rights workers and others perceived as opponents of the Bophuthatswana authorities.

223. The Working Group noted that anti-apartheid movements, including ANC, reportedly insisted that they should not require permission from the courts to hold public political meetings. The police were reported to have continued arresting persons holding public protests without court permission.

IV. RIGHT TO WORK AND FREEDOM OF ASSOCIATION

A. Situation of black workers

224. At its 806th meeting in London, a witness from South Africa, speaking in his personal capacity, gave testimony to the Working Group regarding the situation of black workers in that country. He gave a brief background to the laws enacted by the Labour Relations Act as amended periodically and referred to one particular area which was not covered by the Act: workers in the public sector. The legislation, he said, which covered those employed by municipalities, failed to deal with workers employed in the health sector, railway workers, teachers, police, army personnel, central government employees, and regional and provincial government employees. He added that basic workers' rights legislation, for example, unemployment insurance funds or workmen's compensation laws, did not cover a large number of workers in South Africa. He said that 34 per cent of all economically active whites and 14 per cent of all economically active employees of other racial groups were employed in the public sector. Their exclusion from the Labour Relations Act meant that they did not have the right to strike, the basic right to join the trade union of their choice, or the facilities that went with the right of freedom of association. He said some progress had been made with respect to railway workers as a result of their strike action, as well as the fact that the Government of South Africa had embarked on a process of privatization of the railways. Thus, the witness said, the South African Railway and Harbour Workers' Union (SARHWU), an affiliate of the Congress of South African Trade Unions (COSATU), had now been recognized by the state corporation running the railways and had some collective bargaining rights. However, with regard to workers in other sectors, the situation remained unchanged.

225. The same witness stated that ongoing negotiations between COSATU and the Commission for Public Administration (the administrative body of the Government in charge of the public sector) were dealing with the question of trade union rights for the public sector. Although an agreement on the question of the trade union rights of workers in the public sector in general had been reached, there was a deadlock because the COSATU proposal that the Labour Relations Act should be extended to those workers was not accepted by the Commission. The Commission wanted the question to be addressed under a different Act.

226. Referring to farm workers, the same witness said that 600,000 workers were employed every year on a full-time basis in the farming sector and about the same number on a seasonal or temporary basis. Farm workers, who were not covered by the Labour Relations Act, did not benefit from any legislation covering minimum wage, hours of work, sick pay, sick leave or any other basic workers' rights. Further, he said that as a result of pressure from COSATU in 1990, the Government had requested the National Manpower Commission (NMC), a temporary commission set up by the Government, to investigate the rights of farm workers. NMC had recommended that farm workers be given the same rights as those embodied in the labour laws. The Department of Manpower had amended the recommendations before sending them to the Government by giving wide discretionary powers to the Minister, enabling him to exempt farmers from any

or all of the provisions as recommended and thus negating any legislation that might be passed. Another problem faced by farm workers, according to the same witness, was that the basic conditions in statutes such as the Employment Act and the Unemployment and Insurance Fund would only be presented to Parliament for extension to farm workers in 1992. Further, other statutes, such as the Wages Act and the Labour Relations Act, which afforded union rights were only due to be presented to Parliament for discussion in 1993 and it would appear that the Government intended to wait for a further period of two years before adopting the extension of these laws to farm workers.

227. The same witness also dealt with the situation of the estimated over one million domestic workers, the vast majority women, who formed half of the total women in employment. These workers had no protection against dismissal or rights to paid holiday or maternity leave. After negotiations between NMC and COSATU, an agreement had been reached to extend, in principle, the range of rights to domestic workers, but without a commitment to pass legislation - only to promulgate broad guidelines. Therefore, there would be no compulsion on the part of employers to implement them.

228. Concerning workers in the so-called "homelands", where the basic legislation protecting the rights of workers in South Africa was not applied, the same witness said that the so-called "homelands" had attempted to pass legislation in order to prevent South African trade unions from operating within their jurisdiction by enacting, for example, that workers might only join trade unions registered in that particular so-called "homeland", thus automatically preventing workers from joining trade unions registered and headquartered within the official boundaries of South Africa. The witness quoted the example of the position of textile workers in KwaKwa, near Bloemfontein, who might not join a trade union with headquarters in Durban or Johannesburg. He said that in an attempt to redress the problem, COSATU had embarked during the previous 18 months on a process of negotiation and had exerted pressure on all the so-called "homeland" governments, in order to ensure that trade union rights were offered on a national basis. In addition, there had been large-scale industrial action, particularly in Ciskei, Transkei, KwaKwa and Bophuthatswana which, he said, had resulted in numerous detentions and other human rights abuses, especially in the so-called "homeland" of Bophuthatswana.

229. Some of the so-called "homeland" governments had, in principle, agreed to an extension of trade union rights, but the implementation of such agreements had run into difficulties owing to the bureaucratic process of law making, which was particularly cumbersome in the areas in question. Through negotiation and pressure on these governments, the witness reported, COSATU had met with varying degrees of success. COSATU had proposed that a schedule of South African laws applicable to the so-called "homelands" should include the Labour Relations Act. Referring to the schedule, the witness said that it was currently largely concerned with security legislation. The witness said that the reaction of the governments of the so-called "homelands" to this suggestion was not yet known and, although it seemed that the Government of South Africa would be willing to subscribe to this proposal, its response was not yet clear.

230. The same witness clarified the situation regarding the amendments to the Labour Relations (Amendment) Act of 1988, which had curtailed the rights of workers in many respects, and said that the amendments introduced in particular earlier in 1991 had repealed the 1988 amendments, thus restoring the situation as it existed in 1979, and had reinstated the limited rights previously given to black trade unions, largely in the private sector.

231. At its 812th meeting, in London, the Working Group received testimony from a witness from the University of Cape Town concerning the situation of farm workers. It was hoped to extend to them the provisions of the Basic Conditions of Employment Act, especially in respect of working conditions, hours of work, overtime and leave pay, but the bill in question had not been tabled in Parliament and had been deferred until 1992. Similarly, farm workers had not yet been included under the Unemployment Insurance Act.

232. The witness also referred to the situation of mineworkers and domestic workers, which was far from satisfactory. As they were not protected under any statutes, their rights were governed by the general common law, which did not protect the rights of workers in respect of freedom of association or against victimization for trade union activities.

233. In testimony to the Working Group at its 812th meeting, in London, a representative of the International Labour Organization (ILO) referred to the situation of workers in the agricultural sector, estimated to be in the region of 1.3 million employed on a regular basis, and another half million seasonal workers. In ongoing discussions and recommendations by NMC, dealing with agricultural as well as domestic workers and those in the public sector, the witness said, consistent reference had been made to international labour standards. However, proposals so far fell far short of even the Labour Relations (Amendment) Act.

234. The same witness pointed out that the Labour Relations Act of 1979 and all amendments to it over the years had never extended or applied to the so-called "homelands" in South Africa. They therefore operated under the previous Industrial Conciliation Act or even the notorious Master and Servant Act. The legal situation of workers in the so-called "homelands" was totally unacceptable.

B. Trade union activities

235. It was reported in The Independent of 25 June 1991 that the trial of four COSATU officials, Mr. Jay Naidoo, General Secretary of COSATU, Mr. Sidney Mufamadi, Assistant Secretary of COSATU, Mr. Moses Mayekiso, General Secretary of the Metal Workers' Union (MWU) and Mr. Babe Schalk, had begun on 24 June 1991, under heavy police guard. The union officials, charged with the assault and kidnapping of a suspected police spy, had reportedly pleaded not guilty. The proceedings were alleged to have been filmed by the police. The trial had reportedly arisen out of incidents which took place on 28 August 1990, when a man allegedly behaving in a suspicious manner outside the COSATU premises in Johannesburg and who had been following a prominent anti-apartheid activist, was dragged inside by union officials, who discovered that he was carrying a two-way radio. It was further reported in The Guardian

and the International Herald Tribune of 16 October 1991 that the four accused faced sentences ranging from probation to life imprisonment, following their conviction on 15 October of the kidnap and assault of a plain-clothes policeman. Sentences would reportedly be announced at a later hearing.

236. On the same subject, The Times of 25 June 1991 reported that veteran anti-apartheid campaigner Archbishop Trevor Huddlestone had joined African National Congress (ANC) leaders and some 150 black workers in a protest against the aforementioned trial. Addressing protestors outside the magistrate's court before the trial began, the 78-year-old Anglican prelate reportedly said that the prosecution was in breach of a government pledge to ANC to halt political trials.

237. The Guardian of 25 July 1991 reported that security branch documents which it had obtained indicated that the South African secret police and the Inkatha movement had jointly run the United Workers Union of South Africa (UWUSA).

238. At its 812th meeting, the Working Group was informed that, over the previous 12 months, a fundamental change in the relationship between trade unions, employers and the State had taken place. A series of negotiations with the South African Employers' Consultative Committee on Labour Affairs (SACCOLA) and then with the State administration, including the Department of Manpower, had culminated in the Labour Minute (or "Laboria") of September 1990, under which the State agreed that no new legislation would be introduced without prior consultations with representatives of the trade union movements. It had also been agreed that NMC would be restructured on a representational basis and that COSATU and the National Council of Trade Unions (NACTU) would serve on the Commission. This was the first time that organizations associated with liberation movements in South Africa had agreed to serve on a statutory tribunal and it would provide a way for the trade union movements to participate and assist in the formulation of new labour law. Although the proportion of representation was still under discussion, the witness said that the process was expected to be finalized by the end of December 1991.

239. The same witness referred to the government funding of the Inkatha Freedom Party and its affiliate, UWUSA, which had affected the trade union situation in South Africa. Referring to the Labour Minute, the witness said that it was envisaged that public sector workers would come under the Labour Relations Act within a period of two years.

240. The representative of ILO, in testimony at the 812th meeting, referred to a tripartite workshop on the Labour Relations Act which the ILO had organized in May 1990 at Harare. This had been the first occasion when trade unions, including major ones like COSATU and NACTU, had been brought together with SACCOLA and some members of the legislative committee of NMC to examine ILO standards in the field of employment, in relation to the Labour Relations Act. It led to a range of measures to improve the Act and to eliminate its more unacceptable features, and finally resulted in the introduction and adoption on 1 May 1991 of the Labour Relations (Amendment) Act of 1991.

V. TREATMENT OF CHILDREN AND ADOLESCENTS

241. Information was received from the Human Rights Commission of South Africa (HRCSA) according to which, in the period under review, 20 children and adolescents died and 21 were injured as a result of violence, mainly by police, vigilantes and gunmen. Four of the killings were imputed to Inkatha action, while action by South African and so-called "homeland" police forces allegedly accounted for six of the deaths and 17 cases of injury. In the same period, 113 young persons were arrested, including one 16-year-old and one 13-year-old.

242. According to information received from the International Federation Terre des Hommes on 6 November 1991, a survey made by social workers in South Africa among 50 street children revealed that 90 per cent of them had been detained by the police at some time. The report states that section 29 of the Prisons Act, which stipulates that children under the age of 18 should only be placed in detention in cases of extreme necessity, is not respected in practice. It is alleged that children's prisons are saturated and that minors are often detained for long periods at Pollsmoor High Security Prison. It was reported that at the beginning of 1991, 400 children, mostly street children, were awaiting trial at Pollsmoor Prison. The prison authorities reportedly claim that they are placed in special cells, but it was reported that children as young as 8 years old are place in overcrowded cells containing up to 50 adults. These children are reportedly the victims of various abuses, including rape. It was reported that street children are arrested on a daily basis, imprisoned and charged with vagrancy. They are reported to be sentenced to a R 50 fine or 25 days in jail. An affiliated organization reportedly stated that in September and October 1991 it had knowledge of 20 such cases. It was reported that street children are also charged with theft and murder, although many are released owing to lack of evidence.

VI. NEGOTIATIONS TOWARDS A CONSTITUTIONAL SETTLEMENT

Negotiations

243. The process of talks to cover the differences between police and anti-crime organizations may be illustrated by the following example. The Weekly Mail of 14-20 June 1991 revealed the launching of behind-the-scenes attempts to bridge the gap between police and anti-crime committees in Missionvale, one of the largely coloured areas of Port Elizabeth. High-ranking police officers were reported to have had meetings with political, civic and community representatives, including the Deputy Minister of Law and Order, Mr. Johan Scheepers, and regional executive members of the African National Congress (ANC), to explore ways of creating an "anti-crime forum", where residents in high-crime areas might be drawn in to assist the police in crime control. It was reported that Mr. Scheepers had accepted that street and areas committees could play a role in the fight against crime.

244. The Times and The Guardian of 24 June 1991 announced that a breakthrough in the area of township conflict had been achieved over the weekend of 22-23 June, when a church-sponsored peace conference had reached broad agreement on action to end political violence. The conference had agreed to establish a "preparatory committee" made up of representatives of ANC, the Government and Inkatha to formulate peace proposals, devise a code of conduct for political parties and the security forces, and find ways of enforcing it. The committee was to report back by the first week of August 1991.

245. It was reported in The Times of 16 September and Le Monde and The Guardian of 17 September 1991 that a peace accord had been jointly signed on 14 September between 29 political and trade union organizations and representatives of the Government of South Africa in the hope of ending the violence, which had assumed vast proportions. The accord, drawn up at the initiative of business and church leaders, reportedly set out codes of conduct for the police and political parties. The Pan Africanist Congress (PAC) and the Azanian People's Organization, while pledging their commitment to peace, reportedly had refrained from signing the accord.

246. An article in The Times of 22 October 1991 reported that, in a move that Mr. Douglas Hurd, the British Foreign Secretary, was quoted as hoping would lead to a smooth transition to multiparty democracy, members of the South African police would be sent to the United Kingdom to be trained in low-key community policing. It was reported that British police officers might be sent to South Africa to train police there.

247. The Times, the International Herald Tribune, The Guardian and The Independent gave wide coverage between 26 and 28 October 1991 to the first meeting of the Patriotic Front, which ended in Durban on 27 October. The three-day conference, hosted by ANC and PAC, was attended by some 90 anti-apartheid organizations and included the military governments of Transkei and Venda. Claiming to represent well over 15 million South Africans, the participating organizations were reported to have concurred with ANC proposals for all-party talks to be attended by the Government, an interim government and a 400-member constituent assembly elected by proportional

representation, whose decisions would be reached by a two-thirds majority in public debate. Drawing on the example of Namibia, they had reportedly suggested that the assembly could become a parliament without further elections, thus dismissing government plans for a draft constitution referendum. The newly formed Patriotic Front was reported to have proposed that after forthcoming all-party talks had agreed on constitutional principles and the convening of a constituent assembly, an "interim government of national unity" should be in charge for up to 18 months.

248. It was reported in The Independent of 22 November 1991 that, after prolonged and sometimes secret discussions, the Government of South Africa, ANC and the Inkatha Freedom Party had announced that a preparatory meeting would be held on 29 November "with a view to discussing arrangements for a multiparty conference for 20 and 21 December 1991".

249. According to information received from the South African authorities concerning constitutional talks at a preparatory meeting, which took place in Johannesburg on 29 and 30 November 1991 under the joint chairmanship of Justices Schabert and Mohamed, it was decided that, inter alia, a "Convention for a Democratic South Africa" (CODESA) would be held on 20-21 December 1991. The following agenda items would be considered at the proposed meeting: the creation of a climate for free political participation, general constitutional principles, constitution-making body or process, transitional arrangements, the future of Transkei, Bophuthatswana, Venda and Ciskei (the so-called independent "homelands", now referred to as the TBVC states), the role of the international community, time-frames, and the implementation of decisions made by CODESA. Other items, as decided upon by CODESA, would be identified by a Steering Committee comprising one representative from each of the 20 organizations present at the November meetings, which was established to convene the first meeting of CODESA on 20 December 1991.

250. It was further reported that the Government of South Africa had agreed to facilitate the participation of potential delegates still in exile. All parties present at the preparatory meeting, together with those who had been invited but did not attend, would be invited to participate in the December meetings. In addition, representatives of the United Nations Organization (UNO), the Organization of African Unity (OAU), the Commonwealth, the European Community and the Non-Aligned Movement would also be invited as observers during the December CODESA meetings.

Political prisoners

251. The Times of 15 February 1991 cited an announcement by the Justice Ministry in Cape Town that three supreme court judges had been appointed to head special indemnity committees to hasten the release of political prisoners. The announcement came two days after talks between the Government and ANC concerning constitutional reform. It was reported that the Justice Ministry's announcement would appear to be part of a compromise reached between the two parties.

252. It was reported in the Weekly Mail of 3-9 May 1991 that more than 100 political prisoners, including all 40 on death row at Pretoria Maximum Security Prison, all 40 on Robben Island, the 17 recently transferred from death row to Pretoria local prison, and 13 in East London prison, had been on hunger strike since 1 May. They were joined on 8 May by 33 prisoners at Aliwal North, 12 at Bloemfontein and others at Kimberley and Diepkloof in Soweto. The strikers were reportedly demanding, inter alia, their unconditional and immediate release.

253. An article in The Sowetan of 8 July 1991 reported that a residents' meeting in Sharpeville on 7 July had called on President De Klerk to release the "Sharpeville Six" as part of the general release of prisoners being effected under the agreement between the Government and ANC.

254. The Sowetan of 9 and 10 July 1991 reported that, at a press conference in Pretoria on 9 July, human rights organizations had claimed there was a lack of parity in the way the authorities were releasing prisoners under the terms of the State President's announcement on the remission of sentences (see paras. 260-261).

255. A representative of the Human Rights Commission of South Africa (HRCSA) informed the Working Group, at its 809th meeting, that over 1,000 political prisoners had been released between February 1990 and June 1991 but that, according to HRCSA records, over 800 still remained imprisoned, in contravention of the agreed deadline of 30 April 1991, which had long since lapsed.

256. Amnesty International reported on 24 October 1991 that on 17 October the Bophuthatswana authorities had announced the release of 20 political prisoners but in fact had only released 18 and had retained two who were on hunger strike.

257. In the same document Amnesty International stated that Mr. Johannes Simelane, a political prisoner held in Bophuthatswana, had been released from political imprisonment after a hunger strike lasting 61 days.

258. It was further reported in the same document that more than 20 prisoners had now resumed their hunger strike: the majority at Rooigrond Prison, near Mafikeng, three at Bophelong hospital and two at Thusong hospital. Human rights workers were reported to have expressed concern that the health of hunger strikers was not being monitored closely or carefully enough. It was reported that Mr. Timothy Phiri, a former hunger striker convicted of treason, had been transferred from Rooigrond Prison to Odi Prison, near GaRankuwa, on or about 16 October. Concern was reported to have been expressed for his physical safety, in view of his isolation from relatives and fellow prisoners.

259. Information received from HRCSA on 10 November 1991 reported the release of 27 political prisoners in Bophuthatswana on 9 November. This was reported to bring the total number of political prisoners still held in the so-called "homeland" to 100.

260. In testimony before the Working Group at its 811th meeting, a representative of the Anti-Apartheid Movement referred to the recent changes which had taken place in South Africa, and said that one of the more positive elements in that respect was that those who monitored human rights in South Africa were in a better position to do so and were able to travel in order to provide accurate and detailed information. He addressed in particular the question of the release of political prisoners, as agreed under the Pretoria Minutes, and referred to the situation of political prisoners held in Bophuthatswana, as well as those held on death row, who could in fact be executed at any time, as the moratorium on executions had expired. He also referred to a third group of prisoners, those serving a life sentence and therefore not covered by the general amnesty. In that respect, he referred to the two-thirds remission of sentences announced by the State President on 1 July 1991, applicable to all but certain categories of prisoners. He referred specifically to the case of ANC member Mr. Macbride, whose death sentence had been remitted to a life sentence. However, as the general amnesty did not extend to prisoners in this category, he did not benefit from the two-thirds remission.

261. The same witness then referred to the Audit Committee, established to identify prisoners who could be regarded as political prisoners. That committee, the witness said, had been suspended. Prior to its suspension, he said, 284 cases had been accepted as falling under the accepted criteria on political prisoners. It was pointed out that a significant number of those accepted as political prisoners had still not been released. The witness referred to the "Sharpeville Six" and said that two of them had been released and the four others remained in prison. At the time of writing the present report, the Working Group was not aware if the four had been released. The witness said that although approximately 1,000 prisoners had been released, many still remained in jail.

262. In a letter dated 9 October 1991 from the Permanent Representative of South Africa to the United Nations addressed to the President of the General Assembly, it was stated, inter alia, that:

> "On 30 June 1991, the Minister of Justice, on behalf of the Government, and Mr. Jacob Zuma, on behalf of the ANC, signed the following agreement:
>
> > 'Whereas it is of importance that the procedures, mechanisms and results relating to the release of prisoners under the Groote Schuur and Pretoria Minutes be accepted, therefore, both parties agree that for the purposes of their mutual endeavours in regard to the release of prisoners, it is deemed that finality in the process has been reached today and that the results are accepted. Provided that in any case in which the Government advises that release is not warranted, this shall not infringe on the right of the individual to request further advice from the Advisory Committees. This, however, shall not be construed as extending or delaying the finality of this agreement.'"

263. In a submission to the Working Group on political prisoners dated 17 October 1991, Mr. Brian Currin of Lawyers for Human Rights stated that, as at 30 April 1991, 933 releases had been authorized by the State President since 2 February 1990. Of those, 623 had been authorized during the month of April alone. Apart from the identified Umkhonto we Sizwe trialists and prisoners, there were reported to be a significant number of "unrest-related" prisoners still behind bars, consisting mainly of young people who, through their involvement in United Democratic Front (UDF) structures, became involved in the internal uprising in South Africa during the eighties. While exact figures were not available, LHR estimated that approximately 300 persons remained in prison.

264. Further, Mr. Currin pointed out that, while no ANC National Executive Committee members remained in prison, it was of great significance that most of the senior executives of the ANC in South Africa were still covered by a temporary indemnity. It was the opinion of LHR that some of the remaining prisoners held in South Africa (particularly ANC members with a reasonably high public profile) were being held hostage as a way of pressurizing the ANC to influence the leaders of certain front-line States to release South African agents whom they had imprisoned. It was stated that, to LHR's knowledge, five South African agents were currently being held in Zimbabwe (including three on death row), four members of the South African Defence Force (SADF) in Botswana and one person in Mozambique.

265. The Ad Hoc Working Group of Experts considers it imperative for all political prisoners still incarcerated to be unconditionally released.

Return of exiles

266. At its 814th meeting, a spokesman for the United Nations High Commissioner for Refugees (UNHCR) informed the Working Group of the progress achieved in the UNHCR bilateral negotiations with the Government of South Africa. It was pointed out that discussions had commenced as early as March 1990 but had been broken off after certain difficulties had been encountered. They were resumed later on, however, and indications were strongly pointing towards a successful outcome to the negotiations. Among the difficulties to be surmounted were questions relating to the granting of an unconditional general amnesty to political refugees and exiles.

267. According to subsequent information, agreements were signed at Geneva in August and September 1991 between the Government of South Africa and UNHCR, which would enable the repatriation process to commence. At the time of writing the present report, the Group was informed that the preparations were well under way to repatriate the estimated 40,000 political exiles. According to information received, out of 7,000 exiles who had applied for repatriation by July 1991, approximately 5,000 had been identified and 650 persons had returned to South Africa.

268. The absence of a proclamation of general amnesty for returning exiles continues to cause concern to the Working Group.

269. The Times of 19 August and the International Herald Tribune of 27 August 1991 carried reports of allegations of human rights violations against exiles by members of an opposition movement abroad.

Annex I

APARTHEID LAWS STILL ON THE STATUTE BOOKS AS AT 23 SEPTEMBER 1991
(based on information provided by Lawyers for Human Rights, South Africa)

(1) Local Government Franchise Act 117 of 1984

The Act regulates the voting rights in respect of local government bodies. Under the terms of section 2, only white, Indians and coloureds are entitled to be registered as voters and can vote in any election for the local government body established for the area (wherein the voter's registered address is situated where his ratable property is situated).

(2) Electoral Act 45 of 1979

Regulates the registration of voters and the election of members of the Houses of Parliament. Section 3 classifies voters into whites, coloureds and Indians in respect of the three Houses of Parliament, i.e. the House of Assembly, the House of Representatives and the House of Delegates, respectively. Blacks are totally excluded.

(3) Referendum Act 108 of 1983

Provides for the holding of referenda in order to ascertain the views of voters in the Republic. Under the terms of section 2, the State President may declare the holding of a referendum to ascertain the views of voters or a category of voters. Whites, coloureds and Indians can vote, and thus no blacks' views can be ascertained through a referendum.

(4) Defence Act 44 of 1957

Provides for the defence of the country. Every citizen is liable for training and service in terms of this Act. However, section 2 states categorically that the Act is not applicable to persons who are not white.

(5) Social Pension Act 37 of 1973

This Act consolidates and amends laws relating to pensions and allowances for aged, blind and disabled persons. Under the terms of section 18, the State President may assign the administration of the provisions of this Act in respect of persons belonging to a specified population group defined by him to any Minister. Section 19 excludes the application of this Act to coloured persons.

(6) General Pensions Act 29 of 1979

Regulates pension matters generally. Under the terms of section 16, it is presumed that any white, coloured or Indian person who, immediately before 26 October 1976 complied with all the requirements of laws relating to citizenship or residence in the Republic, shall be deemed to be a South African resident. The Act is silent on blacks.

(7) Prevention of Illegal Squatting Act 52 of 1951

This Act provides for the prevention and control of illegal squatting on public or private land. Although the Act does not refer explicitly to racial groups, its provisions are only applicable to blacks as there was never a single incident involving white squatters.

(8) Coloured Persons Education Act 47 of 1963

Provides for the control of education of coloured persons by the House of Representatives (coloured House of Parliament).

(9) National Education Policy Act 39 of 1967

Provides for the general policy to be pursued in respect of education for white persons in South Africa to the exclusion of other race groups as classified in the Population Registration Act.

(10) Black Administration Act 38 of 1927

The Act provides for the better control and management of black affairs, and applies to blacks only.

(11) Education and Training Act 90 of 1979

Provides for the control of education for blacks by the Department headed by a white Minister in the white House of Assembly and it is the same Minister, in consultation with the Council whose members are appointed by him, who makes policies in this regard. The Council is entirely white.

(12) Black Local Authorities Act 102 of 1982

Provides for the establishment by the Administrator of a province of local authorities' committees, town councils, city councils and town committees, for black persons in specified areas in which such local authorities are situated. The administrators are all white.

(13) Black Communities Development Act 4 of 1984

Like the above Act, this one also applies to blacks. It provides for the development of black communities by the board established by the Minister of Constitutional Development and Planning.

(14) Excision of Released Areas Act 54 of 1988

Provides for the excision of certain land from the defined released areas and its transfer to the Administrator of the Province for the administration and control thereof and rendering services to the residents of the said land.

(15) Self-Governing Territories Constitution Act 21 of 1971

The Act provides for the establishment of legislative assemblies and executive councils in black areas. The Act is only applicable to blacks, to the exclusion of coloureds, Indians and whites who have their "Assemblies" in the House of Representatives, House of Delegates and House of Assembly, respectively. It is in these respective Houses that different race groups exercise their voting powers on separate voters' rolls.

(16) Indians Education Act 61 of 1965

Provides for the control of Indian education to the exclusion of other race groups.

(17) Indians Advanced Technical Education Act 12 of 1968

Provides for the establishment, control, administration and regulation of "technikons" for Indians.

(18) Housing Development Act 4 of 1987

This Act provides for a Board and a Fund to effect or promote the acquisition and alienation of land for the purposes of Indian townships' development - for instance, the granting of loans to enable Indians to acquire land and buildings.

(19) Republic of South Africa Constitution Act 110 of 1983

Sections 41, 42 and 43 provide for three Houses of Parliament, for whites, Indians and coloureds respectively. Under the terms of section 14, matters dealt with in the Parliaments thus constituted are divided into "own affairs" and "general affairs". Own affairs are matters affecting a particular population group in relation to the maintenance of its identity and the upholding and furtherance of its way of life, culture, traditions and customs.

(20) Community Welfare Act 104 of 1987

This Act provides for the establishment of a Community Welfare Advisory Council, regional welfare boards, and certain committees to make regulations relating to certain private hospitals and institutions where certain medical activities are performed. This Act is an own affairs matter in the House of Representatives, for the coloured racial group to the exclusion of other race groups.

(21) Probation Services Act 98 of 1986

It provides for welfare services for accused and convicted white persons and their families. It is also an own affairs matter in the House of Assembly (for whites only) to the exclusion of other racial groups.

(22) Promotion of Constitutional Development Act 86 of 1988

It provides, inter alia, a voice in the process of government to black South African citizens. To this end, a Council, whose members are elected by blacks only, is constituted.

The following are also still on the statute books and apply on racial lines:

Part Appropriation Acts 649, 650 and 657 for whites, coloureds and Indians respectively;

Pension Benefits for Councillors of Local Authorities Amendment Act 1144 of 1991 (blacks);

Development Aid Laws Amendment Act 152 of 1991 (blacks);

Local Government Affairs Council Amendment Act 152 of 1991;

Local Authorities Rating Ordinance Amendment Act 806 of 1991 (whites);

Suid Afrikaanse Akademie vir Wetenskap en Kuns Amendment Act 800 of 1991 (whites);

Town Planning and Township Ordinance Amendment Act 805 of 1991;

Local Government Ordinance Amendment Act 804 of 1991 (whites);

Local Authorities Capital Development Fund Ordinance Amendment Act 677 of 1991 (whites);

Transvaal Board for the Development of Peri-urban Areas Ordinance Amendment Act 676 of 1991 (whites).

Repealed or amended apartheid laws

(1) Upgrading of Land Tenure Rights Act 1507 of 1991

The Act provides for the upgrading and conversion of certain rights granted in respect of land, and for the transfer of tribal land in full ownership to people who could not own such lands owing to their population group.

(2) Abolition of Racially Based Land Measures Act 149 of 1991

This Act also repeals laws that restricted ownership of land based on population group.

(3) Child Care Amendment Act 1346 of 1991

It abolishes the requirement that a child placed in care and the person in whose custody the child is placed should be of the same racial group.

(4) The Population Registration Repeal Act 1491 of 1991

It amended the following Acts:

4.1 Workmen's Compensation Act 30 of 1941, by deleting the definition of "black".

4.2 Marriages Act 25 of 1961, by deleting the provision under which the population group was the basis on which a marriage officer could be designated.

4.3 Births, Marriages and Deaths Registration Act 81 of 1963, by amending a section that made a police officer an ex officio registrar of all deaths of persons other than blacks in his area of jurisdiction.

4.4 Identification Act 72 of 1976, by deleting the birth entry number, since it reflected the entered person's population group.

4.5 National Parks Act 57 of 1976, by deleting the word "European" from the definition of an "officer".

4.6 Unemployment Insurance Act 30 of 1966, by deleting the word "black" from the definition of a "widow".

Annex II

FORMAL AND INFORMAL REPRESSION IN SOUTH AFRICA:
FIGURES FOR 1 JULY TO 13 OCTOBER 1991
(information submitted by the Human Rights Commission of South Africa)

1. FORMAL REPRESSION

Political prisoners

(a) Death row

Three hundred and thirty-seven persons were on death row, including 17 political prisoners.

(b) Hunger strike

Forty-three political prisoners went on hunger strike. As at 7 October, 23 remained on hunger strike, 18 of whom were in Bophelong Hospital.

Security force actions

As a result of security force action 454 persons were arrested: 101 in the Western Cape, 44 in Bophuthatswana, 74 in Ciskei, 107 in Pretoria-Witwatersrand-Vereeniging (PWV), 43 in West Transvaal, 15 in Natal, 26 in Orange Free State, 13 in East Cape, 31 in border regions.

Twenty-four persons were reported killed by security forces: seven in PWV, two in Ciskei, four in East Transvaal, three in West Transvaal, eight in Natal.

2. INFORMAL REPRESSION

Deaths

(a) Vigilante-related action

A total of 399 persons were killed by vigilantes: 147 in Natal, 195 in PWV, 8 in East Transvaal, 12 in West Transvaal, 17 in Western Cape, 20 in Bophuthatswana.

(b) Hit-squad action

Eighteen persons were reported killed by hit-squads: six in Natal, seven in Western Cape, and five in PWV.

(c) Right-wing action

Eight deaths were recorded as a result of right-wing activity: one in PWV, five in North Transvaal, one in West Transvaal, one in Western Cape.

3. TOTALS AS AT 13 OCTOBER 1991

Total killed: 457
Total arrested: 454